

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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TUESDAY

MAY 7, 2001

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The Public Meeting convened in Room 220 South, 441
4th Street, N.W., Washington, D.C. 20001, pursuant to notice at
9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
CURTIS ETHERLY, JR.	Board Member
DAVID LEVY	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

JAMES HANNAHAM	Commissioner
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COMMISSION STAFF PRESENT:

Jerrily R. Kress, Director
Sheri M. Pruitt, Secretary, BZA
Beverley Bailey, Office of Zoning
Paul O. Hart, Office of Zoning
John K. A. Nyarku, Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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(9:47 a.m.)

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. I appreciate your patience in giving us a few extra minutes to get organized here. Let me just state for the record I got a sore arm carrying most of this stuff in this morning, but nonetheless, we're here and ready to proceed. So, with that, I will call to order the Tuesday, May 7, 2002 special public meeting of the Board of Zoning Adjustments of the District of Columbia.

My name is Jeff Griffis. I am the Chairperson. With me today is the Vice Chair, Ms. Ann Renshaw. Mr. Curtis Etherly also sitting as an appointment. Representing National Capitol Planning Commission this morning is Mr. David Levy, and representing the Zoning Commission is Mr. Hannaham.

With us today also is staff from the very far right, Ms. Bailey, Mr. Hart. Mr. Nyarku will be out in a moment, and our corporation counsel, Ms. Sansone.

I welcome you all here today. We have a lot to get through, and I think we will make it through everything. Of course, with every public hearing that we have and special meetings, we do ask that the quorum be maintained. Therefore, we won't have any loud outbursts or furtive actions in the chamber, and I'm sure that won't be necessary to repeat.

I would also just mention the fact that we would

1 like you to turn off all cell phones and beepers at this time so
2 it doesn't disrupt any of the proceedings. I think it's fairly
3 clear that there is a television camera in the room also, so we
4 will of course make sure that that does not, in fact, disrupt any
5 of the proceedings as we continue through the morning.

6 With that, that is all I have for an opening.
7 Unless other programmers have additional information, I think we
8 can move onto our first decision case in the morning.

9 MR. HART: Good morning, Board members, Mr. Chair.

10 The first decision case this morning is Application No. 16785 of
11 33 New York Avenue, N.E., LLC, pursuant to 11 DCMR 3103.2 for a
12 variance from the off-street parking requirements under section
13 2101 for a public hall use in the C-3-C District at Premises 39
14 New York Avenue, N.E. That is Square 671, Lot 18.

15 The hearing dates on this case were November 13,
16 2001, January 15, 2002, and the proposed decision dates were
17 March 5, April 2, and today, May 2, 2002. On the November 13,
18 2001 public hearing, the Board requested several items which were
19 filed. Upon review of the materials and a discussion with the
20 Applicant's representative and the Office of Planning, the Board
21 indicated that substantial improvements with the project had been
22 made. However, additional fine tuning would be needed to resolve
23 all of the Board's concerns.

24 The Board scheduled a decision on the application
25 for March 5, 2002 at its public meeting. At the March 5, 2002

1 public meeting, the Board determined that requested information
2 was necessary for their decision had not been provided, and
3 therefore the decision. In a letter to the Board dated March 25,
4 2002, the Applicant requested a postponement of the Board's
5 decision from the April 2, 2002 to May 7, 2002 public meeting.
6 The Board granted the Applicant's request that its decision be
7 postponed to May 7, 2002 public meeting. Their letter dated
8 April 9, 2002 advised the Applicant that this would be the last
9 postponement of the Board's decision on this application.

10 The Applicant was fully informed that if the
11 requested information was not submitted by the specified date,
12 April 26, 2002, the Board would be forced to make a decision
13 without the benefit of the requested information. By telephone
14 conversations on April 24 and 30, 2002, and a letter dated May 1,
15 2002, staff was informed by investigator Clifton Chambers for the
16 Alcohol Beverage Division of the Metropolitan Police Department
17 about the situation relating to this case.

18 Investigative chambers reported that Mr. Bundu had
19 been warned more than once by the City about serving alcohol
20 without a license at the subject site. The inspector also
21 informed staff that a warrant was being prepared for Mr. Bundu's
22 arrest as of Wednesday, May 1, 2002. The participating Board
23 members in this case, Mr. Griffis, Ms. Renshaw, Mr. Levy, Mr.
24 Etherly, and Mr. Anthony J. Hood. The application is now before
25 the Board for decision.

1 CHAIRPERSON GRIFFIS: Thank you very much, Mr.
2 Hart. It's also come to my attention that perhaps this sound
3 isn't working so well, but we have somebody looking at it, so
4 hopefully we will get that cleared up before we move well into
5 the day.

6 In light, Board members, of the fact that we do
7 have a large submission that came in very recently, Mr. Hart has
8 outlined essentially what it was, and that is from the Government
9 of the District of Columbia Alcohol Beverage Regulation
10 Administration Compliance Division, I would like to step away
11 from our normal procedures at this point because I believe that
12 the Applicant is in the audience and asked just briefly if he
13 might be able to address some of the issues that were brought up.

14
15 If I'm not mistaken, you are Mr. Bundu. If you
16 wouldn't mind turning on the microphone and then just introducing
17 yourself with your name and address.

18 MR. BUNDU: My name is Francis Bundu. I live in
19 Washington, D.C., 1348 Shepherd Street, N.W.

20 CHAIRPERSON GRIFFIS: Okay. Mr. Bundu, as Mr. Hart
21 has obviously laid out very well, we have been through this quite
22 a few times, and we have had great patience, and have given ample
23 opportunity to submit, frankly, the complete procedural
24 documentation that we needed in order to deliberate and make a
25 decision on this.

1 However, I'm calling you up right now in light of
2 the fact of this new investigative report, and I wonder if you
3 wouldn't take two minutes. First of all, have you seen it?

4 MR. BUNDU: Yes, sir.

5 CHAIRPERSON GRIFFIS: Okay, and you've had time to
6 read it and understand everything that's in there?

7 MR. BUNDU: Yes, sir.

8 CHAIRPERSON GRIFFIS: Okay. Can you take two
9 minutes of your time and just enlighten the Board as to what this
10 circumstance is?

11 MR. BUNDU: Yes, sir. The data -- I could not
12 remember the date he visited there. Mr. Chambers visited there.

13 I was not there. We have a report and a flyer. There's a flyer
14 here presenting a gentleman who is a member of my country who has
15 kidney problems, and dialysis. The committee in Washington, the
16 Australia committee in Washington, Philadelphia, New York and
17 other places, according to the report in here, they were informed
18 in all these cities to pay for his sick leave. It costs over
19 \$150,000. The close relatives of this gentleman contacted me
20 about going there to call the country people to donate money.

21 Nothing was sold in that place, and I was never
22 aware of taking beer or wine there. So, I was sick that night.
23 I went there, but I left, just to make sure they were there.

24 CHAIRPERSON GRIFFIS: Okay, and that's one of them.
25 It seems that this report is actually indicating numerous

1 events. In fact, there are photographs documenting alcoholic
2 containers in the facility itself.

3 MR. BUNDU: Those containers, actually the night
4 we're talking about because the gentleman work in there, he took
5 this picture. He took the picture of the containers that they
6 were using, but he said we were selling alcohol. We don't sell
7 alcohol.

8 CHAIRPERSON GRIFFIS: Okay. Do you sublet the
9 place?

10 MR. BUNDU: No.

11 CHAIRPERSON GRIFFIS: So, it's under your control?

12 MR. BUNDU: We sublet it to other people to use it?

13 CHAIRPERSON GRIFFIS: Yes.

14 MR. BUNDU: Yes, these people I give them the
15 place.

16 CHAIRPERSON GRIFFIS: Okay. Now, in your
17 application and your testimony, you indicated that no alcohol
18 would be served, whether it's for sale or not.

19 MR. BUNDU: Right.

20 CHAIRPERSON GRIFFIS: How do you reconcile the fact
21 that first of all, you're out of compliance with your current C
22 of O. Secondly, you are, in fact, selling, not getting into the
23 details of whether you're selling. You are serving alcohol in
24 his space.

25 MR. BUNDU: I didn't sell alcohol. Like I said,

1 the plan was to raise fund for this gentleman that is sick. They
2 went in there, they were sitting in the hall, and they give you
3 like ten dollars, 50 dollars. They got free food. They drink.
4 Now, I told them point blank that I don't have alcohol license
5 here. They said they are going to sell soda and food to raise
6 money because this area was expected to raise some money to send
7 to this guy.

8 CHAIRPERSON GRIFFIS: Right. No, I understand what
9 the fundraiser is, and I don't think we have a problem with the
10 fundraiser. You just made a statement that you, in fact, don't
11 have an alcohol license yet.

12 MR. BUNDU: Yes.

13 CHAIRPERSON GRIFFIS: Are you planning to apply for
14 one?

15 MR. BUNDU: Yes. Well, actually, no. I have to --
16 there is a function of daily basis.

17 CHAIRPERSON GRIFFIS: Right, so you're going to
18 apply for permits for each specific function that will allow you
19 to serve alcohol?

20 MR. BUNDU: If the gentlemen are not -- the people
21 that want to rent the place, if they want to use it, only
22 approval of ABC, I will let them use, but I cannot do it without
23 their approval.

24 CHAIRPERSON GRIFFIS: Do you see my difficulty and
25 I think this Board's difficulty in looking at your application

1 and your testimony as incomplete in terms of this is entirely new
2 information? I mean, your testimony before the Board was that it
3 was supposed to be used and not for social gatherings that had
4 alcohol. Now, we actually have a Metropolitan Police report that
5 tells us no, in fact, you're looking to sublet it for, frankly,
6 kind of weekend parties?

7 MR. BUNDU: No, this is not intention. The
8 intention of that place primarily and still is to meet for meet
9 and discuss something about the Sierra Leone. They do eat there.
10 They do drink there, but not alcohol. I have not decided to do
11 that. Like I just said, if somebody were to use it for that
12 purpose, I would explain fully to him it's not meant for that.
13 If they get permission after the occupancy permit, you gave your
14 permission from the ABC.

15 CHAIRPERSON GRIFFIS: Right, okay. Let me just put
16 it back into perspective because first of all, there's two things
17 I want to do. Board members, in light of this, I think we ought
18 to re-open the record and accept the Alcohol Beverage Regulation
19 Administration's Compliance Division investigative report, and if
20 there's no objections to that, not seeing any objections, we can
21 take that as a consensus. We have put it into the report.

22 Secondly, let me just outline, which all Board
23 members know. This is actually a variance for off-street
24 parking, and the issue comes up of use in order to establish how
25 we were actually, as you recall, how we were actually going to

1 establish what the parking requirement was. So, we've kind of
2 stepped into a lot of the use that's going on only because trying
3 to define the assembly, the occupancy.

4 We also asked quite a bit and numerous times for a
5 plan documentation in order to make an assessment of the parking
6 requirements. With that, I believe you've been joined by another
7 gentleman who might want to introduce himself also for the
8 record. I'm only going to take just two minutes to get through
9 this unless we have additional questions.

10 MR. ENIOLA: Good morning, ladies and gentlemen.
11 My name is Eniola, E-N-I-O-L-A, and I think I have been before
12 this Board several times before regarding this application.

13 CHAIRPERSON GRIFFIS: That is very true. Four
14 times. This is your fifth.

15 MR. ENIOLA: Yes, thank you. All I have to say is
16 that everything that has been requested by this Board I think has
17 been submitted. Now, the new issue is what I'm just trying to
18 understand. As far as I'm concerned, as far as I know to this
19 date, there had been no usage for this property other than for a
20 gathering place. We have established before this Board that
21 about only 45 people is the maximum that is going to get occupied
22 during these meetings.

23 CHAIRPERSON GRIFFIS: How many people were at that
24 fundraiser?

25 MR. ENIOLA: I cannot exactly tell. One, I was not

1 there. Secondly, this is something, people are not going to see
2 that. This is a donation. People don't give money for this guy
3 and walk away.

4 CHAIRPERSON GRIFFIS: How did you monitor the
5 occupancy load of the second floor for any of the events? How
6 did you monitor that you kept it to 45 people on that specific
7 event?

8 MR. ENIOLA: Well, in that regard, if I may speak,
9 there are two gentleman over there that are always there for that
10 purpose. In fact, Mr. Bundu has gone to the extent of, when they
11 are at such a meeting, to have somebody from -- as a security for
12 the purposes of that.

13 CHAIRPERSON GRIFFIS: You mean a hired security
14 guard, or someone that just is -- I don't understand what --

15 MR. ENIOLA: No, the gentlemen that are there are
16 always there for the cleaning up during these meetings. In fact,
17 one of the meetings that will be held lately is regarding this
18 money for the election coming up in Sierra Leone. I have not
19 seen anything in there that is someone disruptive to the entire
20 public.

21 CHAIRPERSON GRIFFIS: Okay. We have, in part of
22 the submission -- actually, it's stamped received April 9, 2002
23 by the Department of Finance and Revenue, but it's part of the
24 submission package that has now been taken into the record.
25 There is an Alcohol Beverage Regulation Administration one day

1 license application that would obviously allow for the serving of
2 alcohol for one day, one event, and that's the intention, if you
3 are allowed to proceed with this, that that's what you would do?

4 MR. ENIOLA: Exactly.

5 CHAIRPERSON GRIFFIS: Correct. The second page of
6 that, item number 16, indicates how many persons are you
7 expecting to attend, and the application says 100.

8 MR. ENIOLA: Mr. Chairman, I think that has been
9 corrected. The only thing I believe before this Board is that an
10 amended application was not submitted. Otherwise, we had
11 promised the fire department, the police department, each and
12 every one of the groups that we have met with, that we won't be
13 more than 75 people at a time in that building and in that public
14 hall.

15 CHAIRPERSON GRIFFIS: I understand that you said
16 that, but I have an application for a sublet, or however you want
17 to arrange it, that was filed April 10, 02 for 100 people. So,
18 it doesn't seem like you're complying even with your own words.

19 MR. ENIOLA: No, Mr. Chairman, I think that is when
20 we originally applied. That was back last year in 2001. That
21 application has not been amended in any form

22 CHAIRPERSON GRIFFIS: When you say application, do
23 you mean application to this Board?

24 MR. ENIOLA: Yes, sir.

25 CHAIRPERSON GRIFFIS: Right, okay. I understand

1 what your application is. I'm not sure you're understanding the
2 fact that I'm finding a discrepancy with the application and the
3 testimony and the actual implementation. But that being said, I
4 think it's clear what we have and what we have in front of us.

5 MEMBER LEVY: Mr. Chair, could I just clarify?

6 CHAIRPERSON GRIFFIS: Yes.

7 MEMBER LEVY: The application to which you're
8 referring is dated April 10, 2002.

9 CHAIRPERSON GRIFFIS: Did I say something
10 different?

11 MR. BUNDU: I don't have that.

12 CHAIRPERSON GRIFFIS: 2002.

13 MEMBER LEVY: The Applicant indicated it was last
14 year.

15 MR. BUNDU: First of all, we don't have that. We
16 don't have that here. Was that signed by us?

17 VICE CHAIRPERSON RENSHAW: It's signed by Mary
18 Anderson.

19 CHAIRPERSON GRIFFIS: Signed by -- I'm sorry, Ms.
20 Renshaw indicated it's signed by Ms. Mary Anderson.

21 VICE CHAIRPERSON RENSHAW: To whom you sublet.

22 MR. BUNDU: That's the lady that got one day per
23 week, and we don't know about the --

24 CHAIRPERSON GRIFFIS: She was using your space,
25 wasn't she?

1 MR. BUNDU: That's what I'm saying, I don't know
2 about that request.

3 CHAIRPERSON GRIFFIS: How are you going to control
4 the people that you're going to have use your space?

5 MR. BUNDU: Because I will tell them basically that
6 this is -- I didn't even see that. If I had seen that, or if my
7 signature is there or his signature, I don't know about it.

8 CHAIRPERSON GRIFFIS: Okay. Here's the problem
9 that I have. Even if we were to proceed and grant this, I think
10 we need to talk briefly about how still the parking requirement
11 and what would be required. If we were to do that, obviously
12 with this variance, we would, as numerous of the reports that
13 come in from the government agency has indicated, conditions.
14 We're probably upwards of 12 or so.

15 I would have apprehension of granting this with
16 conditions because I don't have the strong confidence that any
17 conditions would actually be complied with. Let me have other
18 Board members speak to this.

19 MEMBER ETHERLY: Mr. Chair, if I may. I think you
20 summarized the issue pretty well. The concern is that we had a
21 significant amount of testimony regarding the use for the
22 Applicant's site. We have now substantial information in the
23 record which suggests very strongly that there are some different
24 uses that are taking place there.

25 I think the Board understand that in this

1 particular situation, you were operating -- you agreed to host a
2 fundraiser, and we understand the seriousness of the subject of
3 that fundraiser. I think the Board probably has a couple of
4 options before it.

5 I think we have gotten the extent of the
6 clarification that we're going to get in this particular issue,
7 and Mr. Chair, I think you're absolutely right when you say that
8 there are some concerns. The Board probably could, of course,
9 just vote to move forward with the decision today in this matter,
10 and if that were done, I would probably be inclined to vote
11 against the application.

12 I think there probably is some merit in having some
13 additional opportunity to clarify what questions still remain. I
14 will not that a submission that we have from Metropolitan Police
15 Department for its district dated March 18, did note that as one
16 of its proposed conditions or stipulations that the center would
17 be used as a meeting place for celebrations, birthdays, meetings,
18 and weddings.

19 So, from kind of a subject matter standpoint, the
20 particular events that are at issue in the submission that was
21 provided by the Alcoholic Beverage Regulation Administration,
22 those events would probably be somewhat consistent perhaps with
23 that stipulation. I know that, of course, that stipulation isn't
24 binding. It's just a proposed stipulation, but that being said,
25 Mr. Chairman, I would probably advocate that we move to perhaps,

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1 as you said, hold the record open, get some additional
2 clarification on some of these matters before moving forward.

3 CHAIRPERSON GRIFFIS: Thank you very much, Mr.
4 Etherly. Let me also, just to refresh our memory, I don't think
5 this Board ever moved in a direction that was requiring that no
6 alcoholic beverage be served or not served, sold or not sold. It
7 was an issue that was actually brought up by the Applicant, which
8 brings it obviously part of the record and obviously part of our
9 deliberation in terms of impact.

10 Let's go to another issue that I don't think that
11 I've actually touched upon, and that is two things. One, Mr.
12 Bundu, do you recall submitting a letter from the owner of the
13 property allowing you to make application for this relief?

14 MR. BUNDU: Yes, that letter was submitted to the
15 Board.

16 MR. ENIOLA: If I'm not mistaken, Mr. Chairman,
17 it's the very first time before we had the first interview we had
18 that. Then the second interview, they requested another
19 submission directly from the owner of the property, which of
20 course was submitted also. They are two separate letters from
21 the owner and should be in that file.

22 CHAIRPERSON GRIFFIS: There are several issues
23 attendant to this, as I'm sure you're aware of seeing the
24 submission that came in. In today's submission, there was an
25 issue that was brought up about the question of the existence of

1 33 New York Avenue LLC because the fact that incorporation
2 documents or certification could not be found. Who is Jerry
3 Schuff?

4 MR. BUNDU: That's the owner of the property.

5 CHAIRPERSON GRIFFIS: Shuff?

6 MR. BUNDU: Yes.

7 CHAIRPERSON GRIFFIS: S-H-U-F-F?

8 MR. BUNDU: It should be S-H-A-U-F-F-E-R, Shauffer.
9 That was typo. He's right on the -- before you reach the bridge
10 --

11 CHAIRPERSON GRIFFIS: I don't care where he lives.

12 MR. BUNDU: The cab company, Royal District, and
13 they all are cab companies. He owns that whole land.

14 MR. ENIOLA: Mr. Chairman, I believe that his
15 telephone number was on the letter, and I think he did request
16 that if the Board has any questions regarding this letter to have
17 him contacted.

18 MEMBER ETHERLY: And just for clarification, Mr.
19 Shauffer is the owner of 33 New York LLC?

20 MR. ENIOLA: Right, and 39 also.

21 MEMBER ETHERLY: Who is the owner of the property?

22 MR. ENIOLA: He is.

23 MEMBER ETHERLY: He is also the owner of the
24 property?

25 MR. ENIOLA: Yes.

1 MR. BUNDU: I pay right to him.

2 MEMBER ETHERLY: So who is Pauline S-H-I-D-A-K-E-L?

3 MR. ENIOLA: Mr. Chairman, I don't think I have
4 that name from the owner.

5 CHAIRPERSON GRIFFIS: Well, the application for
6 certificate of occupancy for the African Community Center lists
7 the building owner as Pauline S-H-I-D-A-K-E-L, 4545 Connecticut
8 Avenue, N.W.

9 MR. ENIOLA: Mr. Chairman, I believe that's one of
10 the property that -- it's not 33 New York Avenue. It's one of
11 the other properties surrounding that area when they asked us to
12 submit the names and addresses of all the properties that are
13 located within the area that belongs to someone else.

14 CHAIRPERSON GRIFFIS: No, I think you're mistaken.
15 This is an application for a certification of occupancy for 39
16 New York Avenue, and the trade name of the business is African
17 Community Center.

18 MEMBER LEVY: Mr. Chair?

19 CHAIRPERSON GRIFFIS: Yes.

20 MEMBER LEVY: I have an additional concern which
21 ties directly to the issue of parking in this application, and
22 that is that an additional submittal that we got from the
23 Applicant, which is a floor plan, which we did ask to be
24 submitted. It's labeled AO-1. I'm not sure that I have an
25 exhibit number. It was received May 11 in the Office of Zoning.

1 It shows the space to be utilized as 7,045 square
2 feet. There is a floor plan which we did ask the Applicant to
3 submit, but it's unclear. The drawing that we have doesn't
4 indicate whether or not the entire 7,045 square feet would be
5 utilized for assemblies. Given that there is no fixed seating,
6 which could give us a parking requirement as high as 100 spaces
7 by my calculations, the Office of Planning has recommended an
8 occupancy limit of 45.

9 The Applicant has testified that they intend to
10 have an occupancy limit of 45. We know that there are two
11 alcoholic beverage permit applications for 100 or more people.
12 So, I think that these other issues tie directly to the issue of
13 parking, and I think we still have some questions as to how this
14 space is going to be utilized in order to determine what the
15 parking requirement should be.

16 MR. ENIOLA: If I may, I think the other areas that
17 are located right on that have already been approved for office
18 use. The only application before the Board is regarding that
19 all. That's it. The rest of it has been approved because I
20 think we submitted a copy of the certificate of occupancy for
21 those offices. A copy of it should be in the file as well. The
22 only question before the Board is just this, and that is a part
23 of the 7,000 square foot that we are talking about.

24 MEMBER LEVY: Mr. Chair, it would be the
25 certificate of occupancy to which you just referred that lists

1 the owner as someone different. I think it says 1700 square
2 feet. Is that correct?

3 CHAIRPERSON GRIFFIS: I think it's 17,000.

4 MEMBER LEVY: 17,000?

5 CHAIRPERSON GRIFFIS: Just a second. Let me also
6 just bring up the fact that Exhibit No. 8 is a letter date July
7 24, 2001 to the BZA, and it is to certify Mr. Bundu and the
8 African Community Center is our tenant of the above-referenced.
9 As a result of said tenancy, we hereby authorize Mr. Bundu to act
10 as our agent for the purpose of obtaining a certificate of
11 occupancy as required for the African Community Center. It is
12 signed by Mr. Shauffer, as indicated, managing partner for 33 New
13 York Avenue.

14 However, it is not on any letterhead, and I don't
15 have a number, as it was indicated, but be that as it may. Oh,
16 actually, he does put it here, 398 et cetera.

17 MR. BUNDU: If you have it exact, the hall is right
18 here. In fact, the Office of Planning advised me that I should
19 explain to you today that this area where the hall is is 811,
20 3,011. I have the map. That is the area. All these areas here
21 on the side are storages. We're not using it. It's a big
22 building.

23 MEMBER LEVY: Mr. Chair, I understand what Mr.
24 Bundu is saying. However, this drawing indicates -- it shows the
25 entire office space, and it shades an area of 7,045 square feet

1 with no indication of what's going to be used by the Applicant
2 for assembly.

3 Additionally, the certificate of occupancy for the
4 office space, under information of occupancy, says 1700 square
5 feet. The entire building is 17,000 square feet.

6 CHAIRPERSON GRIFFIS: I see.

7 MEMBER LEVY: So, even if you take 1700 square feet
8 out of 7,000, you still have a very large number of parking
9 spaces that appears to be required.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. BUNDU: May I say something about that, too?

12 CHAIRPERSON GRIFFIS: Okay, the last thing.

13 MR. BUNDU: The whole building is what the man is -
14 - you have over there. Now, this is the second floor we are
15 concerned. The first floor is a car wash. Now, if go past the
16 building, between the building and McDonald's, there is a big
17 sign on the side. It says 12,000 square feet on the second
18 floor. We have little to do with the first floor.

19 CHAIRPERSON GRIFFIS: Okay. Do Board members have
20 any other questions of the Applicant at this time? I appreciate
21 your time, gentlemen, and I would ask you just to take a seat,
22 please.

23 MEMBER ETHERLY: Mr. Chair, just to jump start the
24 discussion, and I'm definitely appreciative of the fact that we
25 did enable the Applicant to come forward and give us some

1 additional clarification on some of the issues that have been
2 raised. If I recall correctly, we did have ANC support for the
3 application, of course, this body is bound to give that great
4 weight.

5 We have not had an ANC -- no one has, and I don't
6 think one has been requested, an ANC response regarding some of
7 the documentation that's been recently submitted. Perhaps once
8 again, that gives me some comfort with regard to getting some
9 further clarification on this matter. I mean, once again, we
10 could go one of two ways. We could just say no, this isn't going
11 to happen. We don't have the sufficient information. We vote to
12 deny the application. Or we could take the opportunity to step
13 forward a few more feet with the Applicant and get some
14 clarification on some of these issues.

15 I agree with Mr. Levy in that there are still some
16 questions which at this point are unanswered and do not support
17 the application for the proposed parking use. Question one,
18 being as to the use of the property. Question two, there still
19 just appears to be some lack of clarity regarding the ownership
20 status of the actual property. We're not talking about the
21 ownership status of the Applicant, 33 New York Avenue LLC, but
22 ownership as it relates to the property. I believe we got some
23 clarification from corporation counsel that spoke to the need to
24 insure that the owner of the property concurs with the
25 application being submitted to the BZA.

1 With those outstanding issues, you know, once
2 again, I think the question before us is very clearly, if we
3 proceed today, my vote is to deny the application. However, I'm
4 suggesting that we get some clarification on these additional
5 issues, and I acknowledge that that's step forward much farther
6 in this than perhaps we need to go, but I'm inclined to be that
7 generous at this particular juncture.

8 VICE CHAIRPERSON RENSHAW: So, Mr. Etherly, did you
9 move to deny?

10 MEMBER ETHERLY: Thank you for that question, Ms.
11 Renshaw. No, that is not a motion to deny the application. My
12 suggestion -- I won't put it in the form of a motion at this
13 juncture, but my suggestion would be that there are still some
14 issues that we need to get clarification on.

15 I would, one, suggest that perhaps some type of
16 outreach, if not through the applicant, be made to the ANC so the
17 ANC can get us some reaction to the recent documentation that was
18 submitted on behalf of the District of Columbia regarding recent
19 events at the site. With that in mind, move forward on our next
20 decision date, or at a special meeting.

21 CHAIRPERSON GRIFFIS: Thank you very much, Mr.
22 Etherly. I think that does, in fact, outline what's before us.

23 VICE CHAIRPERSON RENSHAW: I would make a motion.

24 CHAIRPERSON GRIFFIS: Clearly the Board

25 --

1 VICE CHAIRPERSON RENSHAW: Mr. Chair?

2 CHAIRPERSON GRIFFIS: Yes?

3 VICE CHAIRPERSON RENSHAW: I would make a motion
4 that this Board dismiss without prejudice, understanding that the
5 Applicant can refile within 90 days. Do I hear a second?

6 CHAIRPERSON GRIFFIS: I will second that. In fact,
7 I will have you speak to the motion.

8 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I am
9 saying that because this Applicant has come before the Board on
10 several occasions, more than most applicants before the Board of
11 Zoning Adjustment. We have been very, very clear as to what we
12 were expecting. This was a variance for off-street parking for a
13 public hall.

14 We note in the recent submission from the Alcohol
15 Beverage Regulation Administration that the sublessees to the
16 African Community Center, Inc. put on their applications that
17 they would use needed street parking. We are looking to find to
18 have some kind of an arrangement whereby in this public hall,
19 there will be provisions for off-street parking.

20 Mr. Levy brought up the fact that we still don't
21 have a grip on the numbers using this, even though we said 45,
22 and I thought that the Applicant understood that, but the
23 sublessees don't seem to understand that there is a cap, nor does
24 there seem to be any way that the African Community Center is
25 monitoring the use of the hall when they sublet the space.

1 Given that, I think that we don't need to take this
2 any further. I would recommend that we dismiss without
3 prejudice. As I have stated, the Applicant is able to come back
4 and refile within 90 days.

5 CHAIRPERSON GRIFFIS: Very well said, Ms. Renshaw.
6 Anyone else want to speak to the motion?

7 MEMBER LEVY: Mr. Chair, I would just like to add
8 that I think this Board has been extremely patient and extremely
9 accommodating. We have a very busy schedule, and I think
10 dismissing rather than denying is also generous, giving Applicant
11 an opportunity to come back before the Board again and take
12 another stab at it.

13 CHAIRPERSON GRIFFIS: Thank you, Mr. Levy. I would
14 absolutely agree with you. Anything else?

15 Then all those in favor of the motion to dismiss,
16 indicate by saying aye.

17 (Chorus of ayes.)

18 CHAIRPERSON GRIFFIS: And opposed?

19 (No response.)

20 CHAIRPERSON GRIFFIS: The staff will record the
21 vote.

22 MR. HART: The staff will record the vote as five
23 to zero to dismiss this case without prejudice, Ms. Renshaw
24 making the motion, Mr. Griffis seconding.

25 CHAIRPERSON GRIFFIS: And Mr. Hart, do we have a

1 proxy in that? Is it appropriate?

2 MR. HART: That is correct, Mr. Chair. Mr. Hood
3 has a proxy, and he also votes to dismiss. That would make the
4 vote five to zero.

5 CHAIRPERSON GRIFFIS: Thank you very much, Mr.
6 Hart.

7 Is that all we have today? If I'm not correct in
8 that assumption, we can move on to the next case. Let me just
9 take a quick moment while everyone gets organized here and the
10 staff gets organized. Mr. Bundu, I would suggest that you go
11 next door into the office and speak to the staff members there.
12 Thank you.

13 MR. HART: The next case before the Board is that
14 of 16791, Appeal of Father Flanagan's Boys Home by the Southeast
15 Citizens for Smart Development. Before I get into this case, I
16 would like to point out two typographical errors and an admission
17 that has been made and correct them.

18 In the document we referred to, we inadvertently to
19 a NC-6A. It correctly should be NC-6B. In the voting, it was
20 members participating. Board Member Mr. Renshaw was
21 inadvertently left off. She is one of the participating board
22 members.

23 This case was heard on December 4, 2001, February
24 5, 12, 19 and 26, 2002. This is Appeal Nos. 16791 of Southeast
25 Citizens Board of Smart Development and Advisory Neighborhood

1 Commission 6B pursuant to DCMR Subsections 3100 and 3101 from the
2 administrative decision of Michael D. Johnson, Zone
3 Administrator, allowing the location of Father Flanagan's Boys
4 Home, Phase One. It is C-2-A District at Premises 1308, 1310,
5 1312, and 1314 Potomac Avenue, S.E. That is in Square 1045, Lots
6 134, lot 135 is and added, Lot 136 and Lot 137. Please note that
7 your correct lot numbers are 134, 135, 136, and 137.

8 The Board requested submissions proprietary to this
9 decision meeting. The submissions that were made include a post-
10 hearing brief of the District of Columbia Zoning Administrator; a
11 submission from the Southeast Citizens for Smart Development,
12 which is ANC-6B; a brief of Appellant Southeast Citizens for
13 Smart Development, Inc.; District of Columbia Zoning
14 Administrator's Reply to Appellant's brief; Reply Brief of
15 Intervenor Father Flanagan's Boys Home; Reply of the Appellant;
16 District of Columbia's Proposed Findings of Fact and Conclusions
17 of Law and Opinion; Property Owner's Reply, Proposed Findings of
18 Fact and Conclusions of Law; Appellant's Proposed Findings of
19 Fact and Conclusions of Law. These are submissions, Mr. Chair.

20 Participating Board members in this case are Mr.
21 Griffis, Ms. Renshaw, Mr. Levy, Mr. Etherly, and Mr. Hannaham.
22 The case is now before the Board.

23 CHAIRPERSON GRIFFIS: Thank you, Mr. Hart. Let me
24 just say to the Board members that I think we should jump right
25 into this because I think this will be some valuable discussion

1 if not perhaps even brief argument, and I think this is an
2 important part of our deliberative process. Clearly this has
3 taken great importance with this Board, and this Board I know has
4 -- each individual has taken an incredible amount of time to go
5 through and look at all of the documentations that were submitted
6 and that were accepted into the record.

7 I think that, in fact, it has evidenced quite a few
8 things to this Board, perhaps even touching on the weakness of
9 some of the zoning regulations and how they deal with facilities
10 like CBRS in the District and how we manage and balance the
11 community's requirements for not being overwhelmed by a single
12 use, with the important balance of how we provide services for
13 needed populations in the city.

14 But that isn't really what was before us, and I
15 think that, in fact, the Board has taken great time and diligence
16 in focusing and narrowing exactly what is before us today. I
17 think that this Board clearly has remained impartial to that and
18 focused upon that.

19 Certainly we can walk into an issue that was
20 somewhat on the periphery, and I'm hoping to say all of this so
21 we get it out of the way so we don't go into it in our
22 deliberations here, but I think it is clear that as all D.C.
23 residents, that we are on this Board, we often are able to dream
24 or focus on areas that might have the best and highest use. We
25 may be disappointed with certain uses that come into it, but that

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1 is clearly not what we are deciding today.

2 Let me just confirm, of course, all Board members
3 have read all the recent submissions. We do have findings of
4 facts and conclusions of law. I would hope it up for discussion
5 at this time for Board members.

6 MEMBER LEVY: Mr. Chairman, I would like to jump
7 directly to one specific issue that was discussed at great length
8 in this case that was testified to by all parties in the case,
9 and that is a central issue, and that's the definition of the
10 word facility.

11 All of the parties on at least one or probably more
12 occasions testified and provided written submissions taking
13 various attempts at defining the word facility, testifying that,
14 in fact, the zoning regulations did not contain a definition of
15 the word facility. The Zoning Administrator testified at one
16 point that a facility, since it was not defined, was therefore
17 the same as a building, which is defined in the zoning
18 regulations.

19 So, I want to point out one thing that they've come
20 across in our deliberations, and that is the definition of the
21 word facility that applies to the zoning regulations.

22 CHAIRPERSON GRIFFIS: Let me just interject because
23 I think there is testimony on the record by a Mr. Lourenco who
24 actually refuted that and stated that it could be more than one
25 building, but I understand. I think where you're going with --

1 MEMBER LEVY: You're correct. That is correct, but
2 even in the findings of fact and conclusions of law from the
3 various parties, there was reiteration of the lack of definition
4 of the word facility. So, if you allow me just to walk through
5 that, I think it's worth some discussion by the Board.

6 Beginning in Title 11, I believe this is Section
7 199, is that correct?

8 CHAIRPERSON GRIFFIS: Yes.

9 MEMBER LEVY: Which is basically the section that
10 lays out definitions. There's a definition for community based
11 residential facility, and that is a residential facility for
12 persons who have a common need for treatment, rehabilitation,
13 assistance, or supervision in their daily living. This
14 definition includes, but it's not limited to facilities covered
15 by D.C. Law 2-35, otherwise known as the Community Residence
16 Facilities Licensure Act of 1977.

17 Now, if you go to that act, the 1977 act, what you
18 find is a definition of the word facility. I should note that
19 the 1977 act was actually an amendment to a 1974 regulation, No.
20 74-15, called Health Care Facilities Regulation. However, the
21 definition of the word facility is the same in both, and so I'll
22 read from the 19 -- well, either one.

23 This is from the 1974 regulation. Facility is
24 defined as the overall organization and program and services,
25 including staff personnel, the building or buildings, equipment

1 and supplies necessary for implementation of health, nursing, and
2 sheltered care services.

3 So, I just put that on the table for discussion.
4 The word facility is, in fact, defined. The definition is, in
5 fact, referenced directly in the zoning regulations, and I'd sat
6 that's the definition of facility that would apply in this case.

7 I guess I should further point out or emphasize
8 that it refers to two things that I think are particularly
9 interesting. One is the overall organization and program and
10 services, including staff personnel. The other is that it refers
11 to the building or buildings, apparently indicating that a
12 facility may consist of more than one building.

13 CHAIRPERSON GRIFFIS: Good, and I do think that
14 brings great qualification in terms of building or buildings.
15 Clearly I think in this definition of facility can be several
16 buildings.

17 I think we need to go, then, in terms of looking,
18 if I'm following your train of thought, looking at the overall
19 organization and program and go to the testimony in the case that
20 was presented to us. I think there is in the record the outline
21 of the programs that each of these homes was to be run
22 independently, if I'm not mistaken. Actually, I'm not mistaken.

23
24 I do recall that they have the individual parents,
25 the foster parents that would be in the houses that would run the

1 house. It would provide the transportation, the shopping, the
2 day to day program of the house. How does that fit into the
3 definition that you have evidenced now from the 1974 register?

4 MEMBER LEVY: I think you're correct. There was
5 testimony about -- that some facets of the operation of each
6 dwelling would be carried on solely by the adult members of the
7 dwelling. However, there was also testimony that there would be
8 some centralized functions that would be provided to each
9 dwelling by Father Flanagan's, and my recollection is that those
10 include provision of the vehicle, maintenance of the vehicle,
11 some shared recreation space, some share administrative support,
12 and also I believe, and correct me if I'm wrong, but there was a
13 share scheduling of social worker visits by the overall
14 organization along that line.

15 CHAIRPERSON GRIFFIS: I guess where I'm going to,
16 and I believe that is the case, where at least the social workers
17 were hired on as the main organization. Where do you draw the
18 line? Where is it independent, or is everything connected? Is
19 an organization in the city that owns numerous houses throughout
20 the city, one facility based on the centralization of the
21 ownership, which is obviously a piece in this, or is it the
22 centrality of the management of the staff that may be independent
23 to each of the facilities?

24 MEMBER LEVY: I think it's important to stay
25 focused on this particular case, which is for four building

1 constructed at, I believe, Potomac and Pennsylvania Avenues.
2 Keeping in mind just those four buildings, I would argue that
3 there's enough centralized management going on there to consider
4 those four to be one facility rather than four facilities. I
5 agree that there is some independent operation going on, but I
6 think under the definition of facility, there's enough in common
7 that these would qualify as one facility rather than four.

8 CHAIRPERSON GRIFFIS: So, your indication with this
9 comment is that the Zoning Administrator actually erred in his
10 interpretation or in the lack of finding when looking to a
11 definition of facility?

12 MEMBER LEVY: That's correct.

13 CHAIRPERSON GRIFFIS: How do you address
14 -- in fact, it was either the reply or one of the finding of
15 facts or conclusion of law, that this was a case of first
16 impression, and we had all the zoning administrators testify that
17 this was a unique something that had not happened before with
18 four separate being directly adjacent to each other. Reconciling
19 the fact that there is a previous BZA order that perhaps lays out
20 the scenario of how this was to be accomplished, and that being
21 if you subdivided each of the lots and made independent lots and
22 independent buildings, they would be individual facilities.

23 MEMBER LEVY: And then I think we should definitely
24 discuss the point before we leave the other point, I think the
25 important testimony of the Zoning Administrator went to the fact

1 that -- he testified that, in fact, there was no definition of
2 the word facility when, in fact, I think it was fairly easy and
3 frankly, I don't know why none of the parties picked up on it.
4 It was fairly easy to see in Section 199 the reference is clear.

5 The Zoning Administrator also testified that there
6 was no reason to look beyond the lot line of each individual
7 application. So, you know, I think just that perhaps he didn't
8 go far enough.

9 VICE CHAIRPERSON RENSHAW: Mr. Chairman?

10 CHAIRPERSON GRIFFIS: Yes.

11 VICE CHAIRPERSON RENSHAW: Just to add that there
12 is no evidence in the record that the past ruling was considered
13 by the owner of the subject property, and again, the Zoning
14 Administrator did not rely on that, and has testified so to on
15 that previous decision.

16 CHAIRPERSON GRIFFIS: That's perhaps a good point.

17 I'm not sure I totally agree with it. I mean, with the amount
18 of submission and the amount of discussion on it, no one -- well,
19 I think we can bring that up in a bit.

20 I think Mr. Levy has stepped on clearly a direction
21 of an error that has happened in the interpretation or at least
22 in the processing.

23 MEMBER LEVY: Maybe if I could just follow up on
24 that. I think it's important to discuss the issue of the
25 previous BZA order, but before we move on too far, I'd like to

1 just also point out that the Zoning Administrator testified that
2 he did not consider the Comprehensive Plan in his decision.

3 Now, there was a lot of discussion about whether or
4 not the Comprehensive Plan should apply or not apply if it's in
5 conflict with the zoning regulations. I think the fact that the
6 Zoning Administrator testified that he did not even consider the
7 Comprehensive Plan as a problem.

8 If he had considered the Comprehensive Plan and
9 then decided that it was in conflict and the zoning regulations
10 overruled the Comprehensive Plan or however it was that he put
11 that, I think that would be a different matter altogether, but in
12 fact, he testified that he did not consider the Comprehensive
13 Plan, which he is required to do. I think that's an error as
14 well.

15 CHAIRPERSON GRIFFIS: And what would he have done -
16 - I would agree also. I think it is fairly direct, and it's been
17 established the fact that the Zoning Administrator should, in
18 fact, look to the Comprehensive Plan, but as I think has been
19 strongly argued, and I would agree with, that it is not the
20 regulations, and if there is, in fact, any sort of discrepancy
21 between the two, obviously the zoning regulations rule.

22 MEMBER LEVY: I think the question at hand -- I
23 can't speculate as to what he would have done had he consulted
24 the Comprehensive Plan, but I think it is apparent that in
25 general, not having looked further into the definition of the

1 word facility, not having even consulted the Comprehensive Plan,
2 but had he done those two things, it may have raised some
3 questions in his mind as to whether or not this case should be a
4 special exception.

5 I think that, in general, the Zoning Administrator
6 did not go far enough in his work to make that decision.

7 VICE CHAIRPERSON RENSHAW: Mr. Chairman?

8 CHAIRPERSON GRIFFIS: Yes.

9 VICE CHAIRPERSON RENSHAW: I remember questioning
10 the Zoning Administrator at length about the Comprehensive Plan,
11 specifically 112.6. That is the interpretation of the District
12 elements, and it is so very clear in that document, and the
13 Zoning Administrator is mentioned by name, as we are, the Board
14 of Zoning Adjustment.

15 We shall evaluate the proposal in conjunction with
16 the applicable sections of the Comprehensive Plan and the
17 Comprehensive Plan maps. If the Zoning Administrator had stepped
18 back from this, he saw these applications coming before him at
19 one time, a single EIS form, the same addresses, that it would be
20 worth his while in taking a look at this as a facility and then
21 opening this up to the special exception process, which would be
22 the best route to go in this respect.

23 CHAIRPERSON GRIFFIS: Okay. Anything else on the
24 Comprehensive Plan?

25 Let me bring up another issue in terms of what we

1 were offered in the record in terms of the Appellant's case. How
2 much are we relying on that in order to go in the direction that
3 the Board is going? I bring that up because I think we need to
4 address several things that were heard but also were discussed in
5 the findings of facts and conclusions of law and some of their
6 replies. I mean, we do have the Appellant's expert witnesses
7 testifying that, in fact, and I don't have the exact wording in
8 front of me, but that the Zoning Administrator followed the
9 zoning regulations to the letter of the law.

10 There was a lot of talk of the intent of the zoning
11 and the spirit of the zoning, which I have good understanding of.

12 I think that intent and spirit is further defined by looking at
13 the Comprehensive Plan, but clearly, I think that it's been said
14 that the Comprehensive Plan doesn't stand alone as a regulating
15 document.

16 Was there in the Appellant's case strong enough
17 evidence for us to view the Zoning Administrator's interpretation
18 of each of the separate permit applications that this was, in
19 fact, not separate facilities.

20 MEMBER LEVY: Mr. Chair, if I could, I'll just
21 speak specifically to the point that I made about the definition
22 of the word facility.

23 CHAIRPERSON GRIFFIS: I understand that.

24 MEMBER LEVY: But I would just reiterate that none
25 of the parties relied on that definition, including the

1 Appellant.

2 CHAIRPERSON GRIFFIS: Right.

3 MEMBER LEVY: And so on that point, I would say
4 that the Appellant, in fact, did not make the case specific to
5 the definition of the word facility. I believe they relied on
6 Webster's, as did the Zoning Administrator.

7 CHAIRPERSON GRIFFIS: And were in the regulations,
8 to help my thinking of it, would there be a requirement for the
9 Zoning Administrator to keep a log? For instance, if -- I know
10 we don't want to delve too much in hypotheticals, but if these
11 permit applications had been staggered by several years, would
12 there have been an opportunity for such review?

13 MEMBER LEVY: I think it's important not to
14 speculate on what that might have been. I think the important
15 point is whether or not the Zoning Administrator, in looking at
16 the regulations, could have reasonably been expected to notice a
17 reference to the definition of the word facility, and I would
18 argue that yes, it was fairly clear where to go.

19 CHAIRPERSON GRIFFIS: Right, but once you have the
20 definition of facility in front of you, which we do now, do we
21 have the testimony that actually goes to the fact that would join
22 all these as a single facility? Is there the strong testimony
23 that we can rely on?

24 MEMBER LEVY: I think there's a lot of testimony to
25 that point. It obviously does not go specifically to the

1 definition of facility that I'm referring to, or that the zoning
2 regulations refer to.

3 I think that the Appellant spent quite a bit of
4 time and effort testifying to the fact that these were one
5 facility and not four, and gave various reasons for that. We
6 just didn't go directly to this particular definition.

7 They did, however, go to the issues that are
8 contained in the definition. They spent a lot of time testifying
9 about the operation of the facilities and how that was relevant
10 to whether or not they should be considered as one facility as
11 opposed to four. That idea that, the phrase of the operation, or
12 it's contained directly in the official definition. So, I would
13 say that they did testify to that, and it's relevant.

14 Perhaps the point that wasn't driven home was the
15 issue of one building versus multiple buildings, specifically the
16 being allowed as part of our facility.

17 MEMBER ETHERLY: Mr. Chairman, if I can jump in
18 here, I think Mr. Levy makes a rather compelling case for this
19 Board looking to the definition, and perhaps by virtue of some of
20 my own background, it's always helpful to come back to the
21 definition itself and keep that squarely in front of us.

22 The definition that Mr. Levy has cited, the overall
23 organization and program and services, including staff personnel,
24 the building of buildings, equipment and supplies necessary for
25 implementation of health, nursing, and sheltered care services,

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1 overall is a very all-inclusive word in my lexicon. The
2 testimony that we've received, some of the testimony that was put
3 forward by the Appellant, some of the testimony that was provided
4 by the Appellee, once again, spoke to a number of different
5 issues.

6 With regard to the overall organization and
7 programming services, including staff personnel, let's deal with
8 that section first. We had some testimony regarding parent
9 teacher caregivers. We had testimony which spoke to the fact by
10 virtue of my notes that those individuals are considered to be
11 employees of Girls and Boys Town of D.C. We understand, of
12 course, that shopping, food preparation will be done on a house
13 by house basis.

14 Additionally, each child, each tenant, will receive
15 an individualized treatment plan prepared by licensed clinical
16 social workers. Testimony was provided that spoke to the fact
17 that each social worker would be responsible for two homes, and
18 that those social workers would once again be employees of Girls
19 and Boys Town.

20 The question was raised on cross examination
21 regarding how would utilities be handled at the site. There was
22 testimony and response that that would be handled by a site
23 financial coordinator or site financial officer. I don't believe
24 that testimony got us into the level of detail as to whether that
25 site financial officer would be responsible for each individual

1 home, but once again, looking back to our definition of overall
2 organization and programming services, including staff personnel,
3 there seems to be some continuity that crosses beyond lot lines
4 and boundaries here.

5 I think Mr. Levy has spoken already to the fact of
6 that building or buildings component, and I think implicit in
7 some of the conversation that I just highlighted, we were
8 obviously talking about equipment and supplies necessary for
9 implementation of health, nursing, and sheltered care services.

10 I think what you have here is a pretty
11 straightforward issue. Attorneys are prone to make mistakes, no
12 doubt about that, but I think Mr. Levy is presenting a very clear
13 analysis which, without too much legal or mental gymnastics, gets
14 us to a definition that almost by its own terms suggests very
15 strongly and very clearly that we need to look at this overall
16 program, inclusive of the multiple buildings.

17 Now, does the inquiry stop there? I am somewhat
18 challenged by the question of whether or not that definition
19 allows us or enables the Zoning Administrator, because I think we
20 have to be clear that we pretty much stand in the shoes of the
21 Zoning Administrator. I think Mr. Levy has made the case that
22 yes, there was an error. The error was that we did not look at
23 this definition.

24 If the Zoning Administrator did look at that
25 definition, however, do we still get to the same conclusion? So,

1 I'm still grappling with whether or not that definition gets us
2 across lot lines, across lot boundaries. There was a lot of
3 discussion about lot of record versus assessment lot and, quite
4 frankly, like I said, I'm still grappling with that.

5 My gut, my instinct tell me that yes, it does,
6 because once again, that's a very inclusive and expansive
7 definition. I recognize the concern of some of my colleagues
8 about playing in hypotheticals because we're dealing with a very
9 real situation here, but I am swayed somewhat by a question that
10 Mr. Field raised regarding let's take this to the logical
11 conclusion and give thought to whether or not a Safeway on
12 Wisconsin Avenue versus a Safeway on Capitol Hill, are they one
13 facility.

14 My gut tells me no under this definition. If
15 you're looking at the overall organization and programming
16 services, including staff personnel, you would probably be able
17 to argue, somewhat persuasively, that both of those Safeways,
18 separated by that distance, are primarily serviced by different
19 employees. Now, you know, you could raise, well, what if there
20 is an area manager who has responsibility for multiple stores?
21 Does that one position thereby make those two Safeways the same
22 facility?

23 Once again, I think that would be a stretch here,
24 but given that definition, given some of the testimony that's on
25 the record here, I believe Mr. Levy, once again, suggests in a

1 somewhat persuasive manner, that there is a case here that when
2 there was an error, if the Zoning Administrator were to look to
3 this definition, that definition does then enable him to look
4 forward into the overall program and operations of the Appellee
5 in this case.

6 Now, you raise a very interesting question, which
7 is what happens if these applications were staggered. What
8 happens if you have one application come forward tomorrow and
9 then another application come forward a couple of years later?

10 Once again, I believe the definition is very
11 instructive, and if the Zoning Administrator had kept and would
12 continue to keep that definition firmly in mind, I think he has a
13 template, and I think he has a course over which he can follow to
14 get us to the conclusion that this is indeed one facility, and we
15 have to take into account the overall operations instruction.
16 Thereby, that gets us to a facility that has 24 individuals, and
17 that takes us out of the basis for the permit that the Zoning
18 Administrator had in front of him.

19 MEMBER ETHERLY: Mr. Chair?

20 CHAIRPERSON GRIFFIS: Let me just respond briefly,
21 because I think you've brought on where I was trying to go with
22 this, that Mr. Levy has certainly evidenced the definition, but
23 again I go to well, how was it then interpreted? How does this
24 fit into that definition that we now have in front of us? Was
25 there testimony by the Appellant that gave argument that put this

1 as a single facility or as a total single unit?

2 I think there was strong testimony, and I think
3 that Ms. Washington was the expert witness, that each of the
4 homes were going to be run independently, and we have gone
5 through some of the specifics of that. I don't know if you said,
6 but that they were all to be separately licensed, and the foster
7 families were going to run these independently. My point is how
8 are we -- what facts are we basing our idea that the zoning
9 administrator interpreted or did his interpretation incorrectly
10 when we've evidenced the fact that his first mistake was the
11 minimal facility, but how were we then to make the interpretation
12 of whether it is or it isn't?

13 MEMBER LEVY: Mr. Chair, if I could before you move
14 onto that point, I think it's important to clarify to respond to
15 a comment that Mr. Etherly made, and I just want to point out
16 that this definition that I cited is specific to a use. So,
17 there was a lot of testimony and discussion about what about a
18 grocery store, what about an apartment building. This, the
19 definition of facility, is specific to a particular type of use
20 that doesn't include those. So, it's important.

21 I also would just reiterate that I think it's
22 important to not speculate what if these four homes were in four
23 different parts of the city because the case before us is that
24 there were four, I'll say structures, four buildings on adjacent
25 lots. I think it's important to keep that in mind.

1 Mr. Chair, I didn't mean to move on from your
2 point, but I wanted to clarify that before you got there.

3 CHAIRPERSON GRIFFIS: And Mr. Chair, if I may, Mr.
4 Levy raises -- let me just do that first point. That's an
5 excellent point, and I agree with you 100 percent. The reason
6 why I'm attempting to kind of grapple with this issue of
7 hypotheticals or kind of what if speculation is there's almost a
8 first impression kind of feel to this.

9 Obviously, we're going to take a lot of time today,
10 a lot of time filling out this record, and really putting some
11 meat on this bone because we're talking about the implementation
12 of a rule that I'm sure is going to come up again, not only at
13 this particular ward but throughout the city. So, I'm trying to
14 be as broad as I can with the conversation so that there is some
15 guidance and some clarity here, because this is going to come up.

16 That first point, Mr. Levy, I can't agree with you
17 more, and I just believe it's an excellent point to raise, that
18 the facility definition here that we're speaking about is very
19 specific to a use. So, that does in my mind put to sleep some of
20 the concerns about broader ramifications for this reading.

21 To come back to the Chairman's point once again,
22 however, I would submit that we have some compelling facts which
23 are on the record regarding the parent teacher caregivers and the
24 fact that they are employees of Girls and Boys Town. That
25 suggests that there is going to be a certain commonality as it

1 relates to compensation, as it relates to benefits, as it relates
2 to direction. I think it just is common sense. I don't think
3 it's too much of a quasi-judicial leap to change that.

4 As they are employees of Girls and Boys Town, there
5 is going to be some unanimity with regard to how they carry out
6 their duties and their responsibilities. Once again, two homes
7 per social worker, licensed clinical social workers, who also are
8 employees of Girls and Boys Town based on the testimony and the
9 notes that I've taken.

10 That, too, gives me a substantial sense that when
11 you look at staff and personnel, we're talking about a single
12 facility here. So, just in response to that particular issue,
13 Mr. Chair, and the site financial officer.

14 CHAIRPERSON GRIFFIS: Ms. Renshaw?

15 VICE CHAIRPERSON RENSHAW: Yes, thank you, Mr.
16 Chairman. We're looking at the Zoning Administrator's
17 administrative decision in this case, and we've gone through the
18 definition of facility by Mr. Levy and Mr. Kudos, and we've also
19 gone over the organizational staff and structure, the central
20 hires and intake, and I just want to reference the testimony of
21 Pat Harden, who was brought into the case to talk about the
22 evidence of central administration of the facility.

23 We've talked about the Comprehensive Plan. I want
24 to talk about the land use impact of the central facility. This
25 is certainly on the minds of the community. We have had, and it

1 was brought to the attention of the Zoning Administrator, the
2 community's opposition to granting permits for the building of
3 four separate units, ANC-6B's constituents as it stated in
4 material provided the Board, appeared before government agencies,
5 and appeared before the ANC, and the ANC was objecting to these
6 applications, separate applications.

7 I would state that the community's opposition to
8 this with what we have discussed this morning, that we can move
9 ahead and perhaps determine, have the Board determine at this
10 point that the Zoning Administrator did err and then discuss what
11 the next steps are from that, but to perhaps have a two-pronged
12 vote and make the first motion that we believe that the Zoning
13 Administrator did err and thus, we are voting in favor of the
14 Appellant.

15 CHAIRPERSON GRIFFIS: Thank you, Ms. Renshaw.

16 VICE CHAIRPERSON RENSHAW: Do I have a second?

17 MEMBER ETHERLY: So seconded, Mr. Chairman.

18 CHAIRPERSON GRIFFIS: Okay, just for the
19 reiteration here, we have a motion to grant the appeal?

20 VICE CHAIRPERSON RENSHAW: Yes.

21 CHAIRPERSON GRIFFIS: It has been seconded.

22 MEMBER LEVY: Mr. Chair, I'd like to ask a question
23 regarding the motion on the table. What I heard was that the
24 motion was for a finding that the Zoning Administrator erred.

25 CHAIRPERSON GRIFFIS: Right.

1 VICE CHAIRPERSON RENSHAW: Right.

2 MEMBER ETHERLY: Is that different than a granting
3 of the appeal? That's the question. I guess I would ask Ms.
4 Renshaw to clarify what the motion actually is.

5 VICE CHAIRPERSON RENSHAW: I'll go back and
6 clarify, and we'll look to the secondary of the motion, to agree
7 in this case, hopefully. Let's do it this way, that I would move
8 that we state that the Zoning Administrator erred in his decision
9 on this case, on the four different

10 CHAIRPERSON GRIFFIS: Okay, and you're looking to
11 take stages in terms of your motion and progressing that way?

12 VICE CHAIRPERSON RENSHAW: Yes, we'll do it that
13 way.

14 CHAIRPERSON GRIFFIS: Okay. There's a motion. Is
15 that seconded?

16 MEMBER ETHERLY: I would continue to profess my
17 second to that motion.

18 MEMBER LEVY: I'm sorry, further clarification,
19 please. That the Zoning Administrator erred specifically
20 relative to the two points we've discussed, or what in
21 particular? Just so I know what I'm voting on, please.

22 VICE CHAIRPERSON RENSHAW: That he erred in
23 granting four permits. In other words, dividing this and saying
24 that they are separate units on single lots, that this is a
25 facility. It is a central organization. It is a facility.

1 Therefore, the count is going to be important. Instead of six,
2 we're looking at 24.

3 CHAIRPERSON GRIFFIS: Okay. Let's have new
4 discussion on that motion. Any other questions or clarifications
5 that are needed.

6 MEMBER LEVY: I guess my question is does it go
7 specifically to the points we've discussed regarding the
8 definition of the word facility and regarding -- and does it
9 include anything having to do with the Comprehensive Plan? I
10 guess we should ask that directly. That's what I'm wondering.

11 VICE CHAIRPERSON RENSHAW: As I stated in the
12 preface to the motion, that we had looked at the definition of
13 facility. We had discussed this morning the organizational staff
14 and structure, the central hires and the intakes that need us to
15 believe that this is a central organization. We talked about the
16 Comprehensive Plan and the fact that the Zoning Administrator
17 should have looked to the Comprehensive Plan for some policy
18 guidance. He did not do so.

19 That there is a land use impact of this central
20 facility, that because of the land use impact of the central
21 facility, we are looking to the community. The need for some
22 community hearings, i.e. a special exception which the Zoning
23 Administrator should have pointed towards. The community made
24 its feelings known very early to the Zoning Administrator and
25 certainly to the advisory neighborhood commission.

1 The advisory neighborhood commission came out
2 against this and is arguing for a special exception. So,
3 therefore, I move that the Board state in the first leg of
4 deciding this case that we maintain that the Zoning Administrator
5 erred in his decision.

6 MEMBER ETHERLY: Mr. Chair, if I may, I think Mr.
7 Levy's is raising a good point, though. Piecemealing this I
8 think is going to be very important and walking towards it very
9 slowly. My colleague put a lot of stuff out there that we've
10 gone over, and I want to be sure that we're not incorporating all
11 of that because there are still some conclusions in there that I
12 think we have to get to.

13 VICE CHAIRPERSON RENSHAW: Mr. Etherly, why don't
14 you put the motion on a diet, come back, and we'll see if we
15 can't shape this accordingly.

16 MEMBER ETHERLY: So, the maker of the motion is
17 withdrawing the motion for further discussion?

18 VICE CHAIRPERSON RENSHAW: I am asking the seconder
19 of the motion if he would like to propose a refinement to the
20 motion.

21 MEMBER ETHERLY: I know my colleague, Mr. Hannaham,
22 wants to get in on this. I would almost be inclined to hold off
23 on our motion's practice for a hot moment because I think we
24 probably could merit some additional discussion, but I'm heading
25 in the direction where you're at.

1 VICE CHAIRPERSON RENSHAW: Fine. This is the time
2 for discussion.

3 MEMBER ETHERLY: Yes, I would agree with you.

4 CHAIRPERSON GRIFFIS: Mr. Hannaham?

5 COMMISSIONER HANNAHAM: I'm a little concerned
6 about the precedent here, and that we be very careful in the way
7 we've handled this.

8 My judgment is that even had the Administrator been
9 aware of this particular provision that we just cited today, his
10 decision would not have made any difference to him. I don't
11 think that his mindset was such that he had that sense of
12 creativity that you might have expected from an administrator.

13 Also, the knowledge perfected of Boys Tows
14 operations all over the country and has for decades. I mean,
15 it's pretty evident that they are an organization that
16 coordinates its activities. The fact that these are collocated
17 in one case, it's pretty evident that anybody who really took a
18 look at this and have a different level of appreciation.

19 Nor do I expect anything that we would do here
20 today to change that mindset within the bureaucracy. It would
21 still go on where people would look at this as the Administrator
22 told us, you know. He would have a very narrow interpretation.

23 I think that even if we held before him the
24 definition we have just discussed and that we've discovered, too,
25 recently, I don't think that would change the way he approached

1 this at all. That's why I think it's important for us to be
2 careful in the way we shape our decision and our findings because
3 this is going to come back again.

4 CHAIRPERSON GRIFFIS: Good. Thanks you very much.

5 That's important information to bring in, and I think there was
6 testimony, and the Zoning Administrator's testimony was in fact
7 the mechanical nature for which he reviews applications. I think
8 that is worthy of some discussion about whether that, in fact, is
9 the correct manner, or how much latitude and interpretation the
10 Zoning Administrator is allowed

11 Mr. Hannaham makes a strong case saying that even
12 with, in fact, the definition that might have been in front of
13 the Zoning Administrator at that time, which we assume was not --
14 he may well have, and in fact, would have made the same
15 determination.

16 Again, I think this is complex in terms of its
17 specifics. I think there were errors made, and I think the
18 Zoning Administrator, we have touched on some. I think the BZA
19 is in that also in terms of errors that were made in getting to
20 this specific situation. I do refer to the past BZA order.

21 I also have great difficulty in deliberating on a
22 lot of information that we, in fact, I think -- we've warned
23 ourselves against hypotheticals, but we are, in fact, somewhat
24 adding to the evidence of the record itself. I don't have
25 problems with the definition. I think that is important, and it

1 is part of the record. It's part of the register, but when we
2 then start crafting an Appellant's argument, I have difficulty
3 with.

4 My direct point, I think, is I was, without going -
5 - well, I think there is lengthy discussion that supports the
6 fact that the Appellant actually didn't meet their burden. I
7 think we can, in fact take, and I think Ms. Renshaw is taking us
8 perhaps in a good direction so that we might evidence some of the
9 errors that did come about, but where that leads us is what's
10 giving me some difficulty.

11 MEMBER ETHERLY: Mr. Chair, if I may, Mr. Hannaham
12 raises a good point, and you reinforced it by speaking to the
13 frequent phrase that this was a mechanical process. For what
14 it's worth, let me just simply say with regard to how far
15 conceivably does this argument go in terms of crafting a case for
16 the Appellant or the Appellee, but perhaps in this case maybe the
17 Appellant is -- yes, I would just simply say that, I mean, the
18 historical jurisprudence of this country is replete with examples
19 where the court, thank God, decided to go a little farther from
20 what was put before it.

21 I don't think we're necessarily being overly
22 expansive here, and I would be the first one to agree with you
23 that expansive interpretation and jurisprudence is perhaps not my
24 cup of tea all the time, but I feel that we're still very much
25 within safe harbor here with regard to this definition and where

1 we're heading. Granted, it would have been great if the
2 Appellant and witnesses had walked in here with this, but you
3 know, once again, mistakes before the bar are unknown, and I
4 don't think that this necessarily is a fatal one or prevents us
5 from parsing this definition out and trying to determine what the
6 impact is.

7 Mr. Hannaham raises a good point, which is kind of
8 the next part of the conversation that we'll get to at some
9 point, which is even if you accept this definition, does that
10 still result in an error that would have changed the outcome of
11 the Zoning Administrator's case, and that's why I was implying to
12 agree with where my colleague, Mrs. Renshaw, and I think Mr.
13 Levy's questions regarding about parsing out this conversation so
14 that -- I'll back up to say perhaps we need to be very mechanical
15 in how we deal with this conversation.

16 The first part of it is is there a definition of
17 facility out there that gets some of this other stuff in that
18 everyone's been so hyped to talk about. I think very clearly, we
19 have a case in front of us where there is a definition. The fact
20 that someone did not raise that definition doesn't mean that we
21 should nevertheless not take note of it because the definition is
22 still binding law.

23 Corporation counsel has told us that this is still
24 binding law. Mr. Levy didn't reference it, but upon what I'm
25 sure will be some avid research on the part of a lot of people

1 with legal backgrounds, tonight, tomorrow, next week, whatever,
2 you'll find that the act containing the definition has also been
3 subsequently amended twice, but the definition is still intact.

4 So, it's law, and we have to take cognizance of it,
5 and I think it's appropriate to continue to have that
6 conversation about if you accept that definition, and I think we
7 should, what then does that mean the Zoning Administrator should
8 have done, and does that dictate an outcome in this case that
9 would have been different.

10 MEMBER LEVY: Mr. Chair, again, I would caution us
11 against being too speculative. I think we should proceed
12 cautiously. I think it makes sense to have several motions to
13 consider the today. I'm not sure I agree with Mr. Etherly's
14 reasons for doing that, but I do think there are reasons enough
15 for proceeding in that way.

16 I would agree with you, Mr. Chair, that the
17 Appellant's testimony didn't quite get us where they perhaps
18 intended to get us in terms of extending their case on certain
19 points. However, they spent quite a bit of time talking about
20 what is the definition of the facility, and it was that testimony
21 which lead us to actually wonder, you know, do we have a
22 definition of facility in the zoning regs, and there it is, and
23 exactly what it is. So, I think it is directly related into
24 getting us to this point of deliberation.

25 CHAIRPERSON GRIFFIS: Okay. I don't disagree with

1 that. I think the conclusion of what happens with that
2 definition is what I'm struggling with.

3 MEMBER ETHERLY: I'm sorry.

4 CHAIRPERSON GRIFFIS: No, please.

5 MEMBER ETHERLY: No, I'm sorry. I apologize. So,
6 is there conceivably a first motion? I'm not making the motion,
7 but I'm just trying to work through this. Is there a first
8 motion that can be made that conceivably speaks to this first
9 threshold question of the Zoning Administrator did err in not
10 looking to the definition of facility as it is outlined in the
11 regs which reference, once again, D.C. Law 2-35, the Community
12 Residents Facilities Licensure Act of 1977 and any subsequent
13 amendments. That would be my motion as to a first finding here.

14 VICE CHAIRPERSON RENSHAW: That would be your
15 recommended motion to the --

16 MEMBER ETHERLY: That would be my recommended
17 motion.

18 VICE CHAIRPERSON RENSHAW: To the maker of the
19 motion?

20 MEMBER ETHERLY: That is correct.

21 VICE CHAIRPERSON RENSHAW: I would accept that.

22 MEMBER ETHERLY: So, just to restate, my motion is
23 that we find that the Zoning Administrator did commit an error by
24 not looking to the definition of facility as it is contained
25 within the DCMR under the definition of community based

1 residential facility, which of course contains subsequent
2 definitions relative to this case, and particularly youth
3 residential care home. That definition, by reference, refers to
4 D.C. Law 2-35, the Community Residents Facilities Licensure Act
5 of 1977.

6 That act was in turn amending the Health Care
7 Facilities Regulation Act of 1974. The 1977 act has since been
8 repealed and/or replaced by the Health Care and Community
9 Residents Facility Licensure Act of 1983. Once again, those
10 subsequent amendments did not impact the definition of facility
11 as it was defined by Mr. Levy.

12 I just include all that background so we're very
13 clear, but once again, for the third time, my motion is that we
14 find that the Zoning Administrator did err by not referring, by
15 not reviewing or applying in this case that definition of
16 facility, which is the overall organization and program and
17 services, including staff personnel, the building or buildings,
18 equipment and supplies necessary for implementation of health,
19 nursing, and sheltered care services.

20 CHAIRPERSON GRIFFIS: Further discussion?

21 VICE CHAIRPERSON RENSHAW: Call the vote.

22 COMMISSIONER HANNAHAM: Mr. Chairman, I don't want
23 to ponder this any further but --

24 CHAIRPERSON GRIFFIS: Actually, let me just
25 interrupt. Ms. Renshaw just made a motion to call the vote, so

1 it needs a second.

2 MEMBER ETHERLY: I'll second.

3 CHAIRPERSON GRIFFIS: All those in favor of calling
4 the question signify by saying aye.

5 (Chorus of ayes.)

6 CHAIRPERSON GRIFFIS: And opposed? I will remain
7 opposed.

8 Did you vote on that, Mr. Hannaham?

9 COMMISSIONER HANNAHAM: Oh, no, no. It was all
10 right.

11 CHAIRPERSON GRIFFIS: All right, in which case, the
12 motion does carry, if I'm not mistaken. Mr. Hart?

13 MR. HART: The motion carries. Call in question,
14 Ms. Renshaw making the motion, Mr. Levy seconding.

15 CHAIRPERSON GRIFFIS: Okay. Well, in which case, I
16 would ask all those in favor of the motion as proposed by Ms.
17 Renshaw, amended and seconded by Mr. Etherly which, if you don't
18 mind, I'll just rephrase it so that we're all very clear on
19 what's happening.

20 The motion is -- oh, Mr. Etherly, why don't you say
21 it?

22 MEMBER ETHERLY: My motion, Mr. Chair, I had
23 blinking -- Mr. Chair, I have what appears to be some technical
24 difficulties here, so thank you very much, Mr. Hannaham.

25 The motion is that we find that the Zoning

1 Administrator did err in not looking to the definition of
2 facility as it is contained within the D.C. municipal
3 regulations, period.

4 CHAIRPERSON GRIFFIS: Very good. All those in
5 favor?

6 (Chorus of ayes.)

7 CHAIRPERSON GRIFFIS: Opposed?

8 (No response.)

9 COMMISSIONER HANNAHAM: Mr. Chairman, it's possible
10 to read this and still interpret it as a building, you know, that
11 a facility could be a building. The word overall is what gives
12 it the biggest sense of a larger, but it could be overall with
13 respect to a building or buildings. So, I'm saying that, you
14 know, how far do you want to go with this? I could see this
15 being argued both ways, really, in terms of interpretation and
16 using the language that's in the statute.

17 CHAIRPERSON GRIFFIS: I absolutely agree with you,
18 Mr. Hannaham. In fact, from your beginning statement of
19 conceivably, the Zoning Administrator with err, could have
20 rendered the same decision when looking at this definition.

21 COMMISSIONER HANNAHAM: And I don't doubt that he
22 would have.

23 CHAIRPERSON GRIFFIS: And I think it would be
24 substantiated by the fact that if you looked at a past BZA order
25 that actually outlined the process by which it would be

1 acceptable if it were a matter of right.

2 VICE CHAIRPERSON RENSHAW: However, he did not do
3 that. So, I think we can move on.

4 MEMBER LEVY: Mr. Chair, with all due respect to
5 all of my colleagues, I think it's important that we record the
6 vote before we get too far down another discussion.

7 COMMISSIONER HANNAHAM: Okay. This vote, again
8 made by Ms. Renshaw, second by Mr. Etherly. The Board finds that
9 the Zoning Administrator committed an error by not looking to the
10 definition of facility under D.C. law.

11 MEMBER LEVY: I'm sorry, maybe I missed it, but did
12 we actually record the actual vote on that motion, Mr. Hart? Mr.
13 Chair?

14 COMMISSIONER HANNAHAM: Yes, sir.

15 MEMBER LEVY: Okay, thank you.

16 MEMBER ETHERLY: So, Mr. Chair, with that in mind,
17 the next logical step would be where your apprehensions lie and
18 where Mr. Hannaham was heading, which is given that definition,
19 given that error, where does that or where would that have left
20 the Zoning Administrator in terms of if he had that definition in
21 front of him and the same materials, is that error one which
22 would have resulted in a different outcome.

23 MEMBER LEVY: Mr. Chair, I feel like I really need
24 to weigh in on this. Again, I don't know that it's our place to
25 speculate what the Zoning Administrator would or would not have

1 done had he not erred, as we have just ruled he did. I don't
2 think the issue of what he would have done is before us in this
3 case.

4 CHAIRPERSON GRIFFIS: Well, it is, and I think
5 where this judgment is trying to go is so we found a small error.

6 Does that error, is it monumental enough for us to grant the
7 appeal, is really where we're going. Could, in fact, the error
8 of not seeing that definition go to an interpretation that this
9 was, I mean, lacking the definition, was he mistaken in thinking
10 that these were separate homes on four separate lots?

11 MEMBER LEVY: Okay. I understand now what you're
12 saying. I think that's valid, but I think perhaps before we get
13 to that point, we should take up other matters that are on the
14 table and consider all of the matters together as to whether
15 collectively they were significant enough, we consider them
16 significant enough to grant the appeal. Then we have the issue
17 of the Comprehensive Plan. We have the issue of the previous BZA
18 order we have left to consider.

19 CHAIRPERSON GRIFFIS: Right.

20 MEMBER LEVY: I think we should flush those out
21 before we get back to this point.

22 MEMBER ETHERLY: I don't necessarily have any
23 problem with that. I mean, once again, I'm being, to use our
24 favorite word this morning, mechanical in how I proceed through
25 this, almost to the point of being very elementary. We have a

1 definition that we have now identified an please, we apologize
2 for the feedback to members in the audience, but we have the
3 definition that we have agreed creates an error or did create an
4 error with regard to facility.

5 I would suggest that we could do a number of
6 different things. We can proceed on to some of those other
7 larger issues that Mr. Levy is referencing as it relates to the
8 Comprehensive Plan, as it relates to that previous order. Or you
9 could, once again, very systematically parse out that definition,
10 put forward the case that each of those individual components in
11 the definition have some background in the record. It's my
12 contention that they do.

13 Once you put that to rest, you can then move
14 forward on to discussing the impact of the Comprehensive Plan
15 and/or the previous BZA order should it have or does have on this
16 particular -- on the Board's decision. So, there are two
17 potential ways you can do it.

18 I think you've already had substantial discussion
19 as it relates to the data or the facts in the record that speak
20 to the definition of facility and where that gets us, so perhaps
21 we can just move on.

22 MEMBER LEVY: I guess I perhaps would suggest then
23 that since we have already had a fair amount of discussion on the
24 Comprehensive Plan and the fact that that may or may not have
25 been an additional error, and that perhaps it would make sense to

1 take a vote on that issue so that we have both of the errors that
2 were discussed voted on, and then take the other issues as they
3 come.

4 CHAIRPERSON GRIFFIS: Yes, I think concisely put,
5 we obviously have an issue of the definition. We have the issue
6 of the Comprehensive Plan where the Zoning Administrator should
7 have taken that into account when he reviewed it, however you
8 want to phrase it. The third is going to be the larger issue,
9 and that is whether the Zoning Administrator had the authority to
10 consider these correctly as four separate buildings for separate
11 permits, or as one single development.

12 MEMBER LEVY: Mr. Chair?

13 CHAIRPERSON GRIFFIS: Yes.

14 MEMBER LEVY: I would like to put a motion on the
15 table then. I would move that we find that the Zoning
16 Administrator erred in failing to consider the Comprehensive Plan
17 in examining these permits and deciding to grant these permits.

18 VICE CHAIRPERSON RENSHAW: Second.

19 CHAIRPERSON GRIFFIS: Do you want to briefly speak
20 to that?

21 MEMBER LEVY: Well, just to reiterate the
22 discussion in that what we said earlier, that the zoning
23 regulations clearly require the Zoning Administrator to consult
24 the Comprehensive Plan. The Zoning Administrator testified, and
25 that's contained in Section 112.6, Subparagraph C. In issuing or

1 processing any building or construction permit or any certificate
2 of occupancy, the Zoning Administrator, the BZA, and the Zoning
3 Commission shall evaluate the proposal in conjunction with the
4 applicable sections of the Comprehensive Plan and the
5 Comprehensive Plan maps.

6 The Zoning Administrator clearly testified that he
7 did not do that and, in fact, in either the post-hearing briefing
8 or findings of fact, it is reiterated that the Comprehensive Plan
9 was considered to be not relevant. If you bear with me, I could
10 find that exact statement.

11 That's in the post-hearing brief of the District of
12 Columbia Zoning Administrator, which is Exhibit No. 66, page 5.
13 The Zoning Administrator reiterates his argument that the
14 Comprehensive Plan is irrelevant to the issue before the Board.

15 CHAIRPERSON GRIFFIS: That's going into a larger
16 direction of irrelevancy of --

17 MEMBER LEVY: Let me move right to the point then
18 that I brought up earlier, which is that the Zoning Administrator
19 testified that if, in fact, there's a conflict between the
20 Comprehensive Plan and the zoning regulations, that the zoning
21 regulations are all that the ZA would have to go on to make a
22 determination.

23 In fact, the Zoning Administrator testified that he
24 did not even consider the Comprehensive Plan. So, no one would
25 have known if there was a conflict, and I think the error is not

1 in basing a ruling, or pardon me, not in granting a permit or not
2 granting a permit but in fact, that he didn't consult the
3 Comprehensive Plan at all.

4 CHAIRPERSON GRIFFIS: I see.

5 MEMBER ETHERLY: So just to clarify to the maker of
6 the motion and the seconder of the motion, we're talking about
7 the area being that that Zoning Administrator failed to consider
8 the Comprehensive Plan. We're not talking about relevance?
9 Failed to consider.

10 MEMBER LEVY: That's correct. That's required to
11 do by the zoning regulations.

12 CHAIRPERSON GRIFFIS: In terms of what you read and
13 in terms of the Comprehensive Plan, it's straightforward that the
14 Zoning Administrator is to look to, and we have established the
15 fact that what is the deciding and regulating regulations, which
16 is the zoning regs.

17 MEMBER LEVY: Mr. Chair?

18 CHAIRPERSON GRIFFIS: Yes?

19 MEMBER LEVY: Bear with me a second, please. I
20 need some clarification from corporate counsel on the motion.

21 Okay, corporation counsel has clarified that the
22 requirement is actually contained in the Comprehensive Plan Act,
23 and that would be the zoning regulations, but that the Zoning
24 Administrator is still bound by the requirements. So, I
25 apologize for that error. The motion stands.

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1 VICE CHAIRPERSON RENSHAW: The second stands.

2 MEMBER ETHERLY: Mr. Chairman, just to continue
3 discussion on this, straightforward or not, I think it's useful
4 just to put it to rest. I know we've had some conversation
5 before about it, but we did request that the parties provide us
6 some briefing on this matter at one of the earlier stages of this
7 proceeding, and perhaps through the share through corporation
8 counsel, it may be helpful to get some guidance.

9 We will recall that in the brief that was
10 submitted, and I apologize for not having an exhibit number, but
11 it is a brief entitled, Applicability of the Comprehensive Plan
12 to Appeal of the Decision of the Zoning Administrator that was
13 filed on behalf of Father Flanagan's Boys and Girls Home.
14 There's reference to the Tenley and Cleveland Park Emergency
15 Committee case, and quite frequent reliance on the language that
16 the Zoning Administrator is limited to enforce the certifying
17 occupancy regulations.

18 The Appellee relies on that for support of the
19 statement that therefore, the Zoning Administrator has no role
20 and no standing with regard to interpretation of the
21 Comprehensive Plan. Is there any guidance that corporation
22 counsel can elaborate on that particular case and whether or not
23 it would be applicable for that particular principle?

24 MS. SANSONE: Mr. Chairman, the Tenley and
25 Cleveland Park Emergency Committee case was decided prior to the

1 amendment to the Comprehensive Plan that requires the Zoning
2 Administrator to look at the provisions of the Comprehensive
3 Plan. That case stands for the provision that where there is a
4 specific zoning regulation on point, the Zoning Administrator and
5 other bodies are required to follow the zoning regulations. They
6 cannot directly implement the Comprehensive Plan.

7 However, the subsequent Comprehensive Plan Act
8 makes it clear that the Zoning Administrator and the Board of
9 Zoning Adjustment are to look at the Comprehensive Plan for
10 general policy guidance in evaluating any permit application.

11 MEMBER ETHERLY: Thank you very much, Mr. Chair.
12 Thank you very much, corporation counsel.

13 CHAIRPERSON GRIFFIS: Yes, and I think that's
14 clarification that we're all well aware of, but the Comprehensive
15 Plan offers general policy guidance, as Ms. Sansone has
16 indicated. Okay, further discussions on the motion?

17 All those in favor?

18 (Chorus of ayes.)

19 CHAIRPERSON GRIFFIS: And opposed?

20 (No response.)

21 MR. HART: The staff records the vote, is five to
22 zero, motion made by Mr. Levy, seconded by Ms. Renshaw. The
23 motion being that the Zoning Administrator erred in failing to
24 consider the Comprehensive Plan in his decision.

25 CHAIRPERSON GRIFFIS: Okay. Next issue that I

1 think we probably ought to discuss before we get to the third
2 motion that we perhaps indicated is some leftover information,
3 and that is how we reconcile --

4 MEMBER LEVY: Mr. Chair?

5 CHAIRPERSON GRIFFIS: Yes.

6 MEMBER LEVY: I would just like to reiterate my
7 opinion that we should consider the point that was already
8 brought up, I believe by the Chair, of the existing BZA order as
9 the next item of business.

10 CHAIRPERSON GRIFFIS: Yes, I absolutely agree.

11 MEMBER LEVY: If I could add, I would just say that
12 perhaps we should talk a bit about that order in terms of what it
13 says and the discussion perhaps would center around whether the
14 Zoning Administrator relied in any way on the existing order in
15 making a decision to grant the permits in question.

16 MEMBER ETHERLY: Just as a question in response to
17 that, my colleague, Ms. Renshaw, has noted, and I did not have
18 that reference in my note, but my colleague did note that the
19 Zoning Administrator testified that he did not consider or rely
20 in any way on that order. Just so I can say my piece and be done
21 with it, I don't know where this rush to issue a mia culpa was
22 coming from on this particular order, so I will need some
23 convincing on this front, but I just want to make that
24 observation after Ms. Renshaw's comment about the Zoning
25 Administrator already saying the he did not consider or rely on

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1 this order.

2 MEMBER LEVY: And I don't have the transcript in
3 front of me, but my notes don't indicate that the Zoning
4 Administrator specifically testified to that fact, but that the
5 Zoning Administrator failed to testify to the fact that he relied
6 in any way on the BZA order.

7 CHAIRPERSON GRIFFIS: Right, that's my recollection
8 also. It was not the direct testimony but the absence of it.

9 VICE CHAIRPERSON RENSHAW: Then I stand corrected,
10 Mr. Chairman.

11 MEMBER ETHERLY: We are considering whether or not
12 the Zoning Administrator should have considered that order, or
13 are we considering trying to reconcile the existence of that
14 order and in particular, the troubling phrase that seems to be on
15 everybody else's mind except mine which is -- oh, where is that
16 fun phrase that everyone is so worried about -- that the subject
17 property had been subdivided so that each home is on a separate
18 lot. Each of the four homes could have been used as a youth
19 residential care home as a matter of right.

20 MEMBER LEVY: Mr. Chair, if I could, Mr. Etherly,
21 given that you have that in front of you, I think it's important
22 to reiterate the context and the date of that order and the
23 project that it refers to just to give it some context in the
24 record at this point. I don't have it directly in front of me.
25 I was hoping you would --

1 MEMBER ETHERLY: I will share that with you, Mr.
2 Levy.

3 CHAIRPERSON GRIFFIS: Read it into the record.

4 MEMBER LEVY: I don't mind doing that. I just
5 don't have it directly in front of me.

6 MEMBER ETHERLY: Sure. You're asking the wrong
7 person to read it into the record because I'm trying to find the
8 -- no, no, I know where it's coming from. It's just that I'm
9 taking issue with whether or not this is even an issue. So,
10 that's my hesitancy to even get into it. So, let me just share
11 it with Mr. Levy or the Chair, and you can provide us the context
12 because I don't think there is one.

13 MEMBER LEVY: Well, I guess my concern is it was
14 directly testified to during the hearings, and I think we should
15 at least make proper reference to it, even if we decide it's not
16 relevant. Whatever our decision may be, I want to make sure it's
17 clear what we're referring to. That was my only point. I'm
18 assuming that you were referring to the previous BZA that has to
19 do with the Sergeant's Row facility operated by Father
20 Flanagan's. Is that correct?

21 VICE CHAIRPERSON RENSHAW: That is correct, Mr.
22 Levy, final order date of December 21, 2000, and application No.
23 16531 of Father Flanagan's Boys Town of Washington, pursuant to
24 11 DCMR Section 3104.1 for a special exception for the
25 construction of four youth residential care buildings under

1 Section 303, each housing not more than six persons, and an
2 addition to an administrative building or, in the alternative,
3 the construction of four youth residential care buildings, each
4 housing not more than six, and the conversion of the existing
5 residential unit into an administrative use in the R2 District at
6 Premises 4801 Sergeant Road, N.E., Square 3977, Lot 811.

7 MEMBER LEVY: Thank you.

8 MEMBER ETHERLY: You're welcome.

9 CHAIRPERSON GRIFFIS: Based on the fact that this
10 is actually, and that phrase is indicated two times during the
11 BZA order, whether one agrees or not with the outcome of that
12 statement in the BZA order, certainly it was an interpretation by
13 the BZA that was important enough to put in it. I think clearly,
14 the applicant and the Zoning Administrator would have been able
15 to, even if they did or did not, could in fact rely on that for
16 some guidance for this. I think just based on the fact of that
17 reliance. It is of utmost importance for us to look at it.

18 I think, in fact, that it may be very important for
19 us if this Board feel that that was actually incorrectly done to
20 somehow set forth a remedy for that previous order. Otherwise,
21 it does just stand, and I don't see where or why an applicant or
22 a property owner couldn't proceed as Father Flanagan's did in
23 legally purchasing a piece of property, legally subdividing it,
24 and legally putting four separate structures on those lots, and
25 why that isn't a strong reliance on that previous order, I don't

1 understand.

2 MEMBER LEVY: Mr. Chair, I think it's important to
3 clarify -- well, I think there are three issues perhaps before us
4 in this matter. One is that you just stated whether or not we
5 think that the Board of Zoning Adjustment order is in error,
6 whether the ZA, the Zoning Administrator relied on that, whether
7 there's testimony or evidence in the case that the ZA relied on
8 the order, and then perhaps whether there's any indication that
9 the applicant relied on the order. I think it's three separate
10 issues that need to be fleshed out.

11 CHAIRPERSON GRIFFIS: Well, I don't know if we need
12 to determine who relied on it or not. I mean, it would be
13 interesting if we could determine that. I don't think that we
14 can determine that. By the mere fact if we took our regulations
15 now before us and we asked somebody well, did they consider the
16 regulations in putting in an application, I think we'd have to
17 assume so.

18 VICE CHAIRPERSON RENSHAW: But you are assuming.

19 CHAIRPERSON GRIFFIS: Someone has to.

20 VICE CHAIRPERSON RENSHAW: Well, again, there's no
21 evidence that the --

22 CHAIRPERSON GRIFFIS: But you're assuming they
23 didn't, and I'm making an argument that one should assume perhaps
24 that they did. My point --

25 VICE CHAIRPERSON RENSHAW: There is no evidence to

1 that.

2 CHAIRPERSON GRIFFIS: Well, there is evidence. We
3 have submissions stating the importance of the BZA order. My
4 point is I think we need to perhaps get away from whether one --
5 well --

6 MEMBER LEVY: Mr. Chair, I think it would be
7 helpful to look at the latest submissions from the various
8 parties, which are, of course, part of the record. We have post-
9 hearing briefs, and we have findings of fact and conclusions of
10 law, and look at those in addition to the testimony which are in
11 the transcript notes, and see whether, in fact, there is any
12 evidence in there.

13 CHAIRPERSON GRIFFIS: Okay, first of all, this
14 Board asked for a briefing on the appropriateness of this Board's
15 being bound by its prior decisions, which went directly to this
16 order. There is a submission -- it's received stamped March 22,
17 2002, that I think well documents the doctrine of stari decisis
18 for this. In my understanding of that, it is the reliance and
19 the fairness upon previous decisions and orders that specific.
20 It's obviously larger than that.

21 There is also --

22 MEMBER LEVY: Mr. Chair, before you move on from
23 that --

24 CHAIRPERSON GRIFFIS: Go ahead.

25 MEMBER LEVY: I was just going to comment that I

1 think in my reading of this brief, and this is from Father
2 Flanagan's, the intervenor and owner of the property, it is
3 apparent from this brief that the Applicant did rely on a
4 standing BZA order in making decisions relative to going forward
5 with this project. You know, that's what's been testified to.

6 CHAIRPERSON GRIFFIS: In addition, the Government's
7 Reply to the Appellant's Brief on page three under the issue two,
8 states that pursuant to the District of Columbia law, zoning
9 review process requires compliance with the various provisions of
10 the zoning regulations, if the Applicant meets all the relevant
11 requirements, the building permit must be issued.

12 The importance then goes on to this is precisely
13 the case here. In addition, there is recent precedent set by
14 this Board involving other Boys Town projects, which precludes a
15 different conclusion, and in that note, it is, in fact stated,
16 the footnote states the case in fact, that we are dealing with.

17 MEMBER LEVY: Mr. Chair, we spent a lot of time in
18 this room talking about the fact that the BZA does not set
19 precedent, and so perhaps that's worth some discussion, and
20 perhaps also the fact that this project is in a different zone
21 district and the use is different. We should talk about that as
22 well.

23 CHAIRPERSON GRIFFIS: I think that's, as I have
24 here, is excellent to bring up. I think in terms of setting
25 precedent, certainly we don't set precedent because each case has

1 to be unique, but I think there is a consistency with the Board
2 in terms of its orders and in terms of its interpretation of the
3 regulations, which is part and parcel of what we do in granting
4 relief. We do interpretations, and it is not, as I said, it is
5 decided always on the same regulation, and that allows us to have
6 a consistency in our interpretation.

7 Each case will be unique to itself. So, an order
8 that outlines something, and let me say, I think it was a mistake
9 to have the language in the previous order, but the order is
10 there. I think it is, in fact, something that an applicant or a
11 Zoning Administrator would turn to in terms of trying to make an
12 interpretation or how one would process certain documentations
13 for permitting.

14 MEMBER ETHERLY: Just to add a little to that
15 conversation. The reason why I appear to be so adamant about
16 this conversation is the Appellant's brief on this issue uses --
17 I mean, it's very short, and necessarily so. I mean, there's a
18 word that lawyers love to use sometimes so you don't have to
19 necessarily talk about a lot of stuff that courts like to say.
20 It's called dictum, and I don't see why that phrase is just
21 simply not dictum, and dictum does not have presidential value.

22 I mean, perhaps it's a question for the corporation
23 counsel to share, but I'm of the opinion that that phrase, as you
24 said, should not have been in there because it wasn't necessary
25 to that particular case, such as dictum, and it doesn't have

1 presidential effect.

2 So, my argument would simply be that in my mind
3 resolves the issue, but of course I understand that there's a
4 need for fuller conversation on it. My position is that it's
5 dictum. You could take that phase out of that order and still
6 have the same outcome in that particular case.

7 CHAIRPERSON GRIFFIS: And I think it's to some
8 extent, maybe it was the error, but I think your exact point was
9 rebutted very well, and that rebuttal is indicated in the fact
10 that, and I can't put my finger on it right now, but the location
11 within the order of where the phrase was, and it was, in fact,
12 listed in the conclusions of law, which gives it more weight and
13 importance.

14 So, I would disagree that it is just dictum, and I
15 think it needs to be addressed.

16 MEMBER LEVY: Mr. Chair, I would tend to agree with
17 Mr. Etherly, but I would very much appreciate if corporation
18 counsel were asked to weigh in on this one.

19 MS. SANSONE: Mr. Chairman, with respect to the
20 significance of that statement, it was a very significant in the
21 Sergeant Road decision because under a different zone district
22 and different -- it's actually under a different section of the
23 regulations that that application was processed, Section 303.

24 There was a requirement that the Board could not
25 approve a facility for more than 15 persons for a use residential

1 care home as a special exception. That would have required a use
2 variance in that case unless the Board had determined that the
3 four homes could be considered individually with six children in
4 each one.

5 So, it probably doesn't rise to the level of a
6 holding. It certainly was not analyzed in the decision, but I
7 think it probably goes beyond more than dicta. It was essential
8 to the granting of special exception relief as opposed to
9 variance relief in that case.

10 CHAIRPERSON GRIFFIS: Does that address your
11 concern?

12 MEMBER ETHERLY: I'm not swayed, Mr. Chair, but I'm
13 prepared to let that go and just vote my conscience on that
14 particular issue.

15 CHAIRPERSON GRIFFIS: Okay.

16 MEMBER LEVY: Mr. Chair, in the -- I'm sorry, Ms.
17 Renshaw.

18 VICE CHAIRPERSON RENSHAW: I was going to ask Mr.
19 Levy, Mr. Chairman, if he is going to be moving on a motion.

20 MEMBER LEVY: I'm not ready to do that at this
21 point in time.

22 VICE CHAIRPERSON RENSHAW: All right.

23 MEMBER LEVY: Actually, what I would like to,
24 because there's a voluminous amount of paper, obviously,
25 associated with this case, and some of which I was reviewing

1 again late last night, I can't seem to get my hands on the copy
2 of the document from which you've just read. I'd like to just
3 take a look at that. That was the Zoning Administrator's Reply
4 or the District's Reply to the Appellant's Brief? The one that
5 referenced the ZA's possible alliance on the existing BZA order.

6 CHAIRPERSON GRIFFIS: Oh, indeed, it was the
7 District of Columbia's Zoning Administrator's Reply to
8 Appellant's Brief.

9 MEMBER LEVY: I just need to review a copy of that,
10 and I don't have that in my stack for some reason. Thank you.

11 (Whereupon, the foregoing matter went
12 off the record at 11:58 a.m. and went
13 back on the record at 11:58 a.m.)

14 MEMBER LEVY: Okay, I'm sorry. I can't remember
15 what I highlighted on my copy, but I just come back to the same
16 phrase that you read, which has to do with precedent, which
17 implies precedent, and refers to the other Boys Town project.
18 I'm not sure that it says here that that was relied upon in the
19 Zoning Administrator's determination in granting the permits in
20 question.

21 CHAIRPERSON GRIFFIS: Again, that's right. I think
22 where Ms. Renshaw and I were spinning is it would be an
23 assumption on one way or the other whether it was or not, but the
24 fact of the matter is could he, could the Zoning Administrator
25 rely on that as part and parcel of his interpretation, and I

1 don't think there's any evidence, certainly in the case that said
2 that he could not. It's as a prior BZA order, I would think that
3 it would be appropriate for him to work at the decision that this
4 body had made.

5 MEMBER LEVY: I guess, Mr. Chair, I would
6 absolutely agree with you on your pointing to that, that the
7 Board of Zoning Adjustment erred in some of the text of that
8 order, specifically appearing to give direction of what the
9 Applicant could have done on the project.

10 CHAIRPERSON GRIFFIS: And would you not assert that
11 the Zoning Administrator could, if he did not look at that, as
12 part of his interpretation of the permits?

13 MEMBER LEVY: I think it's definitely possible.
14 I'm troubled by making a decision on that with lacking testimony.
15 I would agree that the Applicant has testified that they relied
16 upon it in making certain decisions about the project involved in
17 this case.

18 CHAIRPERSON GRIFFIS: And so would you assert that
19 this current Board would be required or need to adhere to that
20 previous order?

21 MEMBER LEVY: Well, at this point I'm troubled by
22 it, and I would say that we definitely have to consider it in
23 this case, and we have to weigh the existence of that BZA order
24 against the gravity that we would place any errors we've decided
25 the Zoning Administrator has made. I think that we need to

1 consider those three things together in deciding whether or not
2 to grant the appeal.

3 CHAIRPERSON GRIFFIS: I would agree.

4 MEMBER LEVY: I guess I share your concern about
5 the BZA order, but I'm not quite there in accepting that it was
6 relied upon or could reasonably have been relied upon by the
7 Zoning Administrator in reviewing the permits.

8 CHAIRPERSON GRIFFIS: Well, I think the Zoning
9 Administrator's testimony goes directly to it, whether it cites
10 the order or not. I mean, his testimony is the fact that he was
11 mechanical. We may have issue with that. It was mechanical in
12 looking at each individual permit application and looking at
13 whether it complied specifically with the lot that it sat on.
14 Whether he went back and said well, how did they do this? How
15 did they get to this point? Was there a subdivision or was there
16 a larger picture here?

17 He's testifying that he did not. He looked at each
18 individually and separately. That previous BZA order basically
19 told the Applicant, perhaps told the Applicant, and I think
20 there's testimony to that effect, that they relied on that
21 interpretation by this Board that that was actually the correct
22 way to go about in our zone, different zones that were in a less
23 restricted zone than this current application is in, that they
24 relied on that as the proper procedure for a matter of right
25 development, and that's why -- I'm sorry, what?

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1 MEMBER LEVY: I think it was a more restrictive
2 zone. Isn't that correct, in the previous case?

3 CHAIRPERSON GRIFFIS: Right, I'm sorry. They were
4 in a less restrictive than a commercial zone, and it was a more
5 restrictive in the original order which tends to even, I think,
6 substantiate the fact that you might look to that. Again,
7 without dancing around a lot, I think there are two things here.

8 First of all, I think somehow, if it is at all possible in this
9 Board's understanding, that this Board needs to remedy the past
10 order.

11 I think perhaps we have enough concern in being in
12 the situation that we are in now that that may not have been a
13 correct statement to add into an order, but it may not be correct
14 altogether in terms of the intent and purpose of the zoning regs.

15 However, the larger picture for our specific case in this, I
16 think, will got to whether the Applicant was able to rely on that
17 in order to move ahead as they did for a matter of right
18 development and they are two very separate but very important
19 issues that we need to understand.

20 MEMBER LEVY: I wonder at this point I guess a
21 couple of things. I'm looking at the Zoning Administrator's
22 testimony, and I'm looking in my notes recorded on the testimony,
23 and I see a lot of testimony about how the Zoning Administrator
24 didn't look beyond the lot line. The Zoning Administrator was
25 asked by the Appellant's counsel whether he noticed there were

1 four permits that were similar, and the Zoning Administrator did
2 not answer that question, to my satisfaction.

3 That would lead me to think that the Zoning
4 Administrator didn't see any relevance that existed in the BZA,
5 didn't consider the existing BZA order. I wonder what the
6 relevance of --

7 CHAIRPERSON GRIFFIS: The BZA order let in to four
8 separate applications as a matter of right. By the Office of
9 Zoning Administration, it is part and parcel of the BZA order,
10 that it would have gotten those applications to him. Whether he
11 looked at it and said you know, I think I recall this past BZA
12 order, this is exactly why they're doing it or not, they came in
13 as a matter of right. He found whether knowing of the past or
14 not, he found that it was a matter of right.

15 MEMBER LEVY: The problem that I'm having with that
16 is he found it was a matter of right because he didn't look
17 beyond the lot line, because he considered each one of these
18 buildings to be a facility.

19 CHAIRPERSON GRIFFIS: Because the Applicant had
20 proceeded in a way that was, according to the regulations, a
21 matter of right, and according to a BZA order, stated that that
22 was a proper procedure in so doing.

23 MEMBER LEVY: I guess I see the relevance of the
24 previous BZA order to the Applicant's actions, but not to the
25 Zoning Administrator's actions, and I would ask then to the Board

1 whether the issue of the Applicant's reliance on the BZA order is
2 before us in the appeal, and if that's the case, if we should
3 focus on that rather than whether we suppose that the ZA, the
4 Zoning Administrator -- I'm at a loss for words.

5 CHAIRPERSON GRIFFIS: Well, that's why I'm asking
6 this separate because we can find as we're doing, perhaps -- we
7 can find that there were errors made, and I think there are
8 errors made from the Zoning Administrator's office. I think my
9 personal opinion, in review of this, is that there were errors
10 made in the Board of Zoning Adjustments decisions in the past.

11 So, we can find that, but what is at critical issue
12 if we find that error and grant an appeal, we actually are taking
13 away a permit that actually -- that directly impacts the
14 Applicant. So, that's where the two issues are of great
15 importance to separate within the entire case.

16 MEMBER LEVY: I think it's going to be very
17 difficult for us to determine to guess, to suppose, to wonder
18 whether the Zoning Administrator relied on that order. I think
19 we have clear documentation that the Applicant proceeded relying
20 on the BZA order. So, I'm wondering whether we are able to
21 consider that in deciding whether to grant the appeal and
22 deciding whether, you know, that's the circumstance that --

23 CHAIRPERSON GRIFFIS: But if an Applicant relied on
24 it to put together their application, why would you assume that
25 the Zoning Administrator could not or did not?

1 MEMBER LEVY: Because what I see is a reason the
2 Zoning Administrator, a key reason that the Zoning Administrator
3 approved these permits is because he didn't understand the
4 definition of the word facility, and not that --

5 CHAIRPERSON GRIFFIS: But where in the testimony
6 then from the Appellant is -- I mean, it takes us back to the
7 beginning. I don't find it convincing that it was established on
8 the record that this could conceivably be one facility or
9 separate. I think the testimony that was made, it was stronger
10 for separate facilities.

11 I think Mr. Hannaham's point was well taken, and
12 that is even with the definition, can we say that the Zoning
13 Administrator wouldn't have rendered the same decision? I don't
14 see in what we have presented to us that we can conclude.

15 MEMBER LEVY: And help me out Tell me how that
16 relates back to the BZA order because I'm getting -- it's just me
17 maybe, but I'm lost. Because we've dispensed with the issue of -
18 - with all due respect, we've dispensed with the issue of --

19 CHAIRPERSON GRIFFIS: I understand there's an
20 error.

21 MEMBER LEVY: Whether the error was made.

22 CHAIRPERSON GRIFFIS: Right, there's an error, and
23 the motion that was approved was that there was an error that
24 specific definition was not looked at. The motion was not that
25 we differed with or that we projected what the Zoning

1 Administrator actually would have done with that definition, and
2 that's Mr. Hannaham's point, is that we don't know what he would
3 have done.

4 So, when we go to looking at was there an error in
5 the judgment, in the interpretation, and in the processing of
6 this, I think it goes back to Mr. Hannaham's point in the larger
7 issue of would there have been a different decision. Where one,
8 in the testimony that we have in the case file is there strong
9 information that, and presentation, that these separate homes fit
10 the definition in a different way than was approved by the Zoning
11 Administrator.

12 MEMBER ETHERLY: Mr. Chairman, once again, our
13 question is going right to the heart of the issue here, and
14 that's why I'm being very clear about trying to set up the
15 framework that we're following here and make that motion
16 regarding the error on facility a very basic and vanilla one. We
17 have the facility error. We have the comp plan error.

18 We're now addressing this issue of the presidential
19 or estoppel related value of the language from the prior BZA
20 order. Once we get through this issue, in my mind, the ultimate
21 question still is going to be in light of all of these errors, in
22 light of the two that we've identified, in light of the pre-
23 existing BZA order, does that in some way mean that a different
24 outcome would prevail here?

25 I think that's ultimately the critical question,

1 but I believe my colleague, Mr. Levy, was trying to get us back
2 on track because I think we're a little off here as it relates to
3 the issue of this prior BZA order.

4 Now, I agree with what I think your gut is, Mr.
5 Chairman, which is if we're taking a reading of facility that
6 suggests a different outcome in that prior BZA case, well, we
7 have some language out there that we have to deal with, and I'm
8 fine with that. I'm fine with saying hey, this is now going to
9 create some type of rural conflict that we need to ferret out and
10 clarify.

11 I'm completely fine with that, even though I don't
12 think it's necessary in this case because I'm still at that whole
13 dictum stage, but I will note that we're talking along the issue
14 of estoppel. Is the Board estopped from valuing that language in
15 the prior order because the Applicant relied upon it.

16 Now, Mr. Levy, let me put that question aside for a
17 second because Mr. Levy raises an important point of relevance,
18 which is did the Zoning Administrator rely on that prior order in
19 any way such that we need to even be talking about that? Well,
20 there are a couple of ways we can deal with that. In this
21 particular case, I mean, perhaps -- gosh, I mean, I don't know.
22 I'm confusing myself as I talk.

23 What I'm getting at is if we need to try and
24 resolve what appears to be an emerging conflict because of that
25 language in the pre-existing BZA order, we can go ahead and do

1 that, and I think we can resolve that. It's just simply saying
2 we are now repudiating that language. That's fine. Of course,
3 we do it all the time. Obviously, we're not a court where it
4 applies to judicial body, but if that's what we need to do, then
5 that's what we need to do, and it doesn't take five more hours of
6 conversation to get us there.

7 So, more than anything, my comment is just to get
8 us back on track as it relates to the issue of that prior order.

9 I agree with Mr. Levy in that I don't recall specific testimony
10 that the ZA relied upon it. We do have testimony in terms of the
11 briefing which suggests very clearly that the Appellee Boys and
12 Girls Town did give consideration to that prior order.

13 In regard to their brief on the Board of Zoning
14 Adjustment and it being bound by prior decision, they endeavor in
15 a footnote on page four, footnote number two, to speak very
16 clearly to the tests that relate to the doctrine of equitable
17 estoppel. So, we have something in the record which does speak
18 to the reliance of the Appellee.

19 Now, the question I think that's before us right
20 now is okay, well, how do we resolve that issue, and I think I'm
21 hearing from you, Mr. Chair, that you're concerned by virtue of
22 the existence of that language that we need to resolve a conflict
23 that appears to be emerging. I'm fine with that.

24 Mr. Levy's question I think is do we even need to
25 go there. Is that even germane to the issue of the appeal before

1 us. I'll stop there.

2 MEMBER LEVY: Let me put this question forward to
3 the other members of the Board, if I may, Mr. Chair.

4 CHAIRPERSON GRIFFIS: Yes.

5 MEMBER LEVY: And perhaps this is sort of a
6 rethinking of where I was earlier this morning when we were first
7 developing this discussion and these issues for discussion, and
8 that is whether or not it's possible, and clearly the Appellee is
9 testifying that they relied upon the existing BZA order. I think
10 that it is reasonable that they might have done so.

11 Is it possible, and is it necessary in this case to
12 separate a finding on granting the appeal, and perhaps I'd ask
13 legal counsel to weigh in with some possibility of separating the
14 issue of granting appeal from the issue of the direct
15 ramifications of the appeal.

16 CHAIRPERSON GRIFFIS: Well, I think there is
17 submission on that, and that's where I'm grappling with to try
18 and find, but I believe if it was granted, then it would be
19 effective prospectively.

20 MEMBER LEVY: And here's my point on that, because
21 I think I perhaps wasn't clear. I know I wasn't clear, but I'm
22 having a hard time seeing how the previous BZA order impacted the
23 Zoning Administrator's decision making in considering these
24 permits. However, I think it's clear that the Applicant relied
25 on the BZA order and that the decision in this case could have

1 some major impacts on the Appellee, who has testified that they
2 relied on what was the same BZA order.

3 The Appellee is clearly saying that basically they
4 did exactly what the BZA said they should do. I think that's
5 clear. I don't think it's clear that the ZA considered that.
6 So, I'm finding it necessary, if possible, to somehow separate
7 the issue of granting or not granting the appeal from the
8 ramifications it has on the Applicant. The ramifications is not
9 the right word. Help me out. The --

10 CHAIRPERSON GRIFFIS: Well, I think it is. I think
11 ramifications is clear.

12 MEMBER LEVY: And I guess the discussion we started
13 to bring up about a prospective remedy is appropriate.

14 CHAIRPERSON GRIFFIS: Yes, I don't disagree with
15 your statement, Mr. Levy. I think that is the importance of
16 separating the two issues.

17 VICE CHAIRPERSON RENSHAW: Mr. Chairman?

18 CHAIRPERSON GRIFFIS: Yes.

19 VICE CHAIRPERSON RENSHAW: I am not persuaded that
20 the Zoning Administrator, again the subject of this appeal,
21 relied on the Sergeant Road facility case, and if he did rely on
22 it, and I can't guess on this, I would just ask whether or not it
23 might have been an after the fact reliance on the case. I'm also
24 questioning whether or not this is the proper time to go into
25 great lengths about correcting the previous order.

1 CHAIRPERSON GRIFFIS: Well, it may not be, but to
2 your point with the Zoning Administrator, first of all, we can
3 look at the Appellant's case, which its own witness has stated,
4 testified that zoning regulations were followed by letter of the
5 law. Whether we agree with that or not, that's the testimony
6 that's in.

7 We also had, which was interesting, and I'm looking
8 at the reply brief of Father Flanagan's Boys Home. Thirty years
9 of service of testimony for the Zoning Administrator and past
10 Zoning Administrators indicated that the procedure was correctly
11 taken, that in fact, they concur that the issuance of the permits
12 was legal, permitted, and as a matter of right.

13 So, I think what I'm going to, and when we look at
14 that is that there was a whole procedure set. There was a whole
15 background of how the Zoning Administrator was to review that.
16 Whether he can specifically point to the fact that he pulled it
17 out or not, it may well have been fairly ingrained, that order
18 and other procedures, that would lead them to the decision that
19 he did.

20 MEMBER LEVY: I would just throw in there, Mr.
21 Chair, that the definition of facility is 28 years old.

22 CHAIRPERSON GRIFFIS: Oh, I understand that. I
23 don't disagree, and I voted in favor of the motion. I think it
24 was a mistake, but here we have a whole procedure that was set
25 up. That's where we're going to have to differentiate between

1 how the responsibility of the Zoning Administrator and then the
2 actual ramifications for the holder of the permits.

3 So, how would you like to proceed at this time? It
4 is 12:20 I am not adverse to taking a short break, if that would
5 be appropriate, or we can continue on with this and see who gets
6 worn out first.

7 VICE CHAIRPERSON RENSHAW: Break time.

8 CHAIRPERSON GRIFFIS: Why don't we take a 15-minute
9 break at this point and reconvene. Are you all right with that,
10 Mr. Levy?

11 MEMBER LEVY: Absolutely.

12 CHAIRPERSON GRIFFIS: Ms. Renshaw?

13 VICE CHAIRPERSON RENSHAW: Yes.

14 CHAIRPERSON GRIFFIS: Gentleman --

15 MEMBER ETHERLY: And Mr. Chair, that is a recess
16 break, not a lunch break, correct?

17 CHAIRPERSON GRIFFIS: Yes, it's a very short
18 recess. We will be right back.

19 (Whereupon, the foregoing matter went
20 off the record at 12:20 p.m. and went
21 back on the record at 2:28 p.m.)

22 CHAIRPERSON GRIFFIS: I absolutely appreciate
23 everyone's patience in allowing us to take a little additional
24 time. It may be believable or not, but it may expedite things for
25 the rest of the day, not to mention us getting something to eat

1 also.

2 Let me just make quick comments on the rest of the
3 day schedule. We will be finishing up the morning schedule of
4 the public hearing, so we will be deciding all of the cases that
5 are dealing with the cases that were before us. This afternoon's
6 case, the LG Industries, I am hoping that most of the people that
7 were here for that were notified, but if not, we have rescheduled
8 that for the 14th at 3:00, and we look forward to seeing all of
9 them here at that point.

10 Let us jump back then into the second case of the
11 morning for decision. When left off, we had two motions that had
12 been decided. I think we can pick up where left off and get
13 quickly back into it.

14 I think we possibly should give some -- well, do
15 Board members feel satisfied with any confidence in the motions
16 that we passed that I don't need to review? Should we move on
17 from there?

18 Okay, let us move on, and as outlined by the Board,
19 we had one further issue to discuss and form into a motion, and
20 that really goes to the heart, and I should always bring my
21 notes, but I don't have them in front of me. They will go to the
22 heart of the matter of whether the appeal is upheld or not.

23 I am essentially open for preliminary discussion on
24 that, if so desired. If we have other additional information or
25 issues that we want to discuss prior to dealing with that, we

1 should do so now.

2 MEMBER LEVY: Mr. Chair?

3 CHAIRPERSON GRIFFIS: Yes.

4 MEMBER LEVY: I think before we broke, we were
5 struggling to -- we were discussing the previous BZA order, the
6 standing BZA order at the Sergeant Road facility and struggling
7 to find some evidence in the record that there was, in fact,
8 reliance upon that order by the Applicant and by the Zoning
9 Administrator and moving forward in this case.

10 CHAIRPERSON GRIFFIS: Yes.

11 MEMBER LEVY: We did find that the post-hearing
12 brief I believe it was of the Appellee claims reliance upon
13 standing BZA order of Sergeant Road in moving their project
14 forward at Pennsylvania and Potomac Avenues. However, I think
15 we've failed at this point to come up with anything in testimony
16 or in the record of the hearing that supports that.

17 Additionally, I believe we have so far failed to
18 come up with any testimony on the part of the Zoning
19 Administrator that supports the idea that the Zoning
20 Administrator relied on that BZA order.

21 CHAIRPERSON GRIFFIS: Okay.

22 MEMBER LEVY: So, that leaves the questions still
23 before us.

24 CHAIRPERSON GRIFFIS: Well, I think perhaps it
25 would be appropriate then to move this along to take a motion at

1 this time and have discussion and see how that weaves into the
2 motion.

3 MEMBER LEVY: We had talked previously about
4 revisiting the prior two motions to determine whether the Board
5 felt that those two errors that we ruled the Zoning Administrator
6 had made, whether those two errors substantially lead toward a
7 decision on the appeal. Do we want to revisit that prior to a
8 new motion?

9 CHAIRPERSON GRIFFIS: I think it can go either way,
10 frankly. If you have a motion, I think it ought to speak to what
11 moved the motion to that and what it's based on, and I think that
12 will have some substantive discussion. I think that will bring
13 up all the issues that are before us at this time, be it the past
14 BZA order, be it the past procedure of the Zoning Administrator,
15 the role that this Board had taken in substantiating that
16 procedure.

17 I think what you're dancing around, I guess it can
18 be very important. I think we will need to speak directly to the
19 motion to make absolutely clear what the motion was in regards to
20 the Comprehensive Plan, and I think we do need to have some brief
21 but direct statements on our understanding of what that motion
22 was, and also in our understanding in the fact that the BZA are
23 not the ones that enforce the Comprehensive Plan, in fact, that
24 we have no jurisdiction in that.

25 I think that was fairly clear in our motion, that

1 it was a notice that this Board made at more of a fact finding.
2 I feel very strongly that that, as evidenced as fact in error
3 does not go to a direction of granting or denying the appeal.
4 Therefore, I would direct the Board to deliberate on other issues
5 that take you to a motion that may inform which direction that
6 motion takes.

7 MEMBER LEVY: Mr. Chair, I think I would agree with
8 your take on that particular issue of what we ruled was an error
9 in the ZA not consulting the Comprehensive Plan. I think that
10 the other issue in which we ruled, where we ruled that the Zoning
11 Administrator erred, had to do with the definition of facility
12 and the Zoning Administrator's testimony that there, in fact, is
13 no definition of facility. At another point, testified that
14 facility and building had the same definition.

15 There was testimony from all parties that Webster's
16 dictionary should have been used, when I think it's clear when I
17 explained my motion, that the definition of facility does exist.

18 It's referenced directly in the regs, so I would argue that that
19 error is a substantial error in this case.

20 VICE CHAIRPERSON RENSHAW: Mr. Levy, are you
21 shaping a motion based on that, please?

22 MEMBER LEVY: I would move that this Board grant
23 the appeal in Application No. 16791 of Southeast Citizens for
24 Smart Development, Inc., and Advisory Neighborhood Commission 6B.
25 Pursuant to 11 DCMR 3100 and 3101, the administrative decision

1 of Michael D. Johnson, Zoning Administrator, allowing the
2 location of Father Flanagan's Boys Town Phase One, a residential
3 group home, in a C-2-A District at Premises 1308, 1310, 1312, and
4 1314 Potomac Avenue, S.E.

5 VICE CHAIRPERSON RENSHAW: Second.

6 CHAIRPERSON GRIFFIS: Discussion, Mr. Levy?

7 MEMBER LEVY: I guess I would begin by just talking
8 about this issue of the definition. I guess we've talked about
9 that a lot already. I think it's clear that the Zoning
10 Administrator did not -- in searing for a definition for this
11 type of facility, I think it's clear in the zoning regulations
12 where he should have been lead. I think that his testimony goes
13 directly to several important points. One, that there is not --
14 that if a facility cannot be multiple buildings, and another that
15 the operations of the use are relevant in the definition that's
16 referenced in the zoning regulations, goes specifically to both
17 of those points, and in fact, uses the words building or
18 buildings and also speaks directly to operations.

19 So, I think that's one important point. There was
20 also, you know, it's been a very tough case on which to
21 deliberate because there are other issues. There's the issue of
22 whether or not the Applicant relied on the standing BZA order.
23 There's a concern that a ruling in this case will then somehow
24 prejudice the Applicant based on that reliance.

25 However, it's difficult to find evidence of the

1 reliance in the testimony and, in fact, we have to consider along
2 with that the fact that the appeal itself was made in a very
3 timely manner and that the reliance of the Applicant on the
4 standing BZA order was probably for a very short period of time,
5 at the beginning of -- we probably should pull the exact date
6 that the appeal was made, but I think it could be argued that the
7 reliance isn't up until the time the case was heard. It's up
8 until the time that the appeal was filed.

9 Jump in anytime.

10 CHAIRPERSON GRIFFIS: Ms. Renshaw, did you want to
11 speak as a second?

12 VICE CHAIRPERSON RENSHAW: Well, Mr. Chairman, I
13 just wanted to direct some comments to the Appellant because the
14 community, the Citizens for Smart Development, Inc. has brought
15 this case to the BZA. In granting the appeal, this would give
16 some more than what we might call moral victory opportunity to
17 the citizens to consider their grievances.

18 We need to make sure that the community, and it
19 started with this application, has a say in the development of
20 this tract, and I would hope that we are able to, or the
21 community is able to pursue a course of action that would bring
22 some of these points to the fore, and then there can be some
23 resolution of what these grievances might be.

24 CHAIRPERSON GRIFFIS: Thank you, Ms. Renshaw.
25 First of all I take a little bit of issue, although I understand

1 what you're saying, a little bit of issue in terms of granting a
2 moral victory. I don't think necessarily is our task in charge,
3 but there that is.

4 I have great concern with this motion. First of
5 all, I think what has happened is this Board has found a new
6 depth to a definition that by all the testimony that we have been
7 given in this case, has not been used before. I think the Board
8 clearly wondered why it wasn't being found and brought to us, and
9 I think it is based in the understanding and reliance on a
10 previous process by the Zoning Administrators in terms of
11 definition CBRF's.

12 Whether we agree or not is a larger picture, but
13 what we have specifically before us in this case is was that
14 actually an error for the Zoning Administrator to continue that.

15 On its face alone, I would say perhaps. I might be persuaded,
16 but with the addition that this Board, not present members, but
17 this Board actually reinforced that decision and that
18 interpretation makes it even more difficult for me to go in a
19 different direction.

20 That, I think it ought to be clearly said, as we
21 know in the past BZA order, it was actually based on a Zoning
22 Administrator's memo and decision that was incorporated well
23 within the body of a BZA order. I find that, in fact, although
24 direction, I thought, was given to all participants, I found the
25 Appellant's argument lacking substantially in many of the issues,

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1 the first being the definition, which I think this Board has
2 taken on.

3 My concern here is that as this Board changes the
4 rules and procedures essentially, if this goes through, I'm not -
5 - well, I may concur with that new procedure and that new
6 direction, but I have great concerns in what the ramifications
7 are for changing essentially midstream a procedure that has been
8 relied on. I think it ought to importantly say that if it is
9 found that we grant this appeal and we find that it was based on
10 an error of a definition, that it is clearly not the individual
11 Zoning Administrator that was before us that made a personal
12 error. I think he relied on a very substantive and a very long-
13 term process that he was thinking correctly that he should
14 follow.

15 MEMBER LEVY: Mr. Chair?

16 CHAIRPERSON GRIFFIS: Yes.

17 MEMBER LEVY: I'd like to address those points,
18 specifically because I think all of us are troubled by them, and
19 I know that I am, this previous BZA order and the fact that the
20 Board of Zoning Adjustment is also in error. It's not limited to
21 the Zoning Administrator.

22 However, two important points. I think that all
23 parties had adequate opportunity to testify specifically to the
24 issue of alliance on the BZA order, and I think that the record
25 doesn't reflect that they did. Additionally, and I now have the

1 dates for --

2 CHAIRPERSON GRIFFIS: But wouldn't you agree that
3 it's the Appellant's burden to make the case?

4 MEMBER LEVY: I mean, I don't know how to address a
5 question like that.

6 CHAIRPERSON GRIFFIS: Just yes or no.

7 MEMBER LEVY: In a general course, yes, but that
8 does not change the fact that, you know, there's a clear path to
9 the definition of facility that wasn't followed in this case.
10 The reliance on Webster's dictionary only applies if there's no
11 definition. I think all you have to do is look at Section 199,
12 and you see a clear path to the definition that should have been
13 applied. I don't know why it wasn't. I don't know why the
14 Appellant didn't get there.

15 Additionally, the permits were approved on August
16 30 of last year, of 2001. The appeal was filed on September 10.

17 So, even if the Applicant did rely on the standing BZA order, on
18 the previous BZA order, that's a period of ten days or 11 days
19 that the reliance -- before the property owner, the Appellee, the
20 intervenor, what have you, would be unnoticed, that he was
21 proceeding at his own risk, that appeal had been filed. So, I
22 have to weigh that in my consideration of the case.

23 CHAIRPERSON GRIFFIS: And I think it's an excellent
24 point. I think the appeal was timely. I mean, certainly this
25 was being monitored, but that can go either way in one's

1 deliberation. That can take you to the fact that the Zoning
2 Administrator had 100 percent confidence that he was correct,
3 knowing well that there was going to be a lot of people looking
4 at this. It can go to the Applicant having great confidence in a
5 process that they have taken with the direction and support of a
6 BZA order and standing practice.

7 So, I guess the difficulty is, again, if we change
8 the course midstream, I will have difficulty supporting a motion
9 that does that that then holds a
10 -- well, in this particular case, Father Flanagan, responsible
11 for a change of course.

12 MEMBER LEVY: And I understand, and I share your
13 concern, and have considered that at length in my own
14 deliberation on this case. I have to ask myself, I am confident
15 that there was an error made by the Zoning Administrator, and I
16 have to ask myself then what impact does this have on the
17 Applicant, but I also have to ask myself what impact our decision
18 will have on the Appellant, who did file an appeal in a timely
19 manner.

20 I think in coming to a decision on this case, we
21 need to consider both sides. We need to consider the impact on
22 both sides and the relief available to both sides, and I think
23 there's a very clearcut method of relief in this case should we
24 decide to grant the appeal.

25 CHAIRPERSON GRIFFIS: Okay, and I agree, and I'm a

1 firm advocate that the community and the larger neighborhoods are
2 participants in any development and development plans that are
3 local to them, and I think there are vehicles for that. There
4 are not perhaps as many as there should be and certainly not as
5 subsigent as they should be. However, even today when the
6 discussion Board members had brought up that we had found this
7 definition, that we have changed the course of how perhaps CBRF's
8 will be looked at and defined. We can't predict that.

9 I don't think the entire Board is convinced that
10 with this newfound definition or newfound process, that this
11 would immediately be a special exception case. What I'm hearing
12 in the granting of an appeal on this is that you feel fairly
13 strongly that it does, in fact, fit a special exception based on
14 the new definition.

15 MEMBER LEVY: Yes, I would agree. I feel that it's
16 appropriate as a special exception case that it should have been
17 a special exception, that a special exception hearing would allow
18 both sides, would be a proper forum for both sides to present
19 their case. The parties in opposition would still carry the
20 burden that comes along with proving that there's adverse impact
21 on the property, but I think it's the fairest method to give both
22 sides a forum for pursuing appropriate relief.

23 CHAIRPERSON GRIFFIS: But again, you're assuming
24 then that it's not a matter of right, because only things that
25 were not matter of right would go to that negotiation, let us

1 say.

2 MEMBER LEVY: I don't believe it's a matter of
3 right.

4 CHAIRPERSON GRIFFIS: Okay. Ms. Renshaw?

5 VICE CHAIRPERSON RENSHAW: The Zoning Administrator
6 in his course of action, determined that it was a matter of
7 right, and that set him on a specific course. We, at least I,
8 here today in judging this case, determined that this was a
9 facility under the definition as stated in testimony before this
10 Board today, and therefore, it has a larger context.

11 Had the Zoning Administrator recognized that,
12 dwelled on that, in his decision making period, he would have
13 been set on another course of action that would have included the
14 community and have addressed perhaps early on some of the
15 problems that the community was bringing to the city's attention.

16 You talked about ramifications. You used that
17 word, and that was ramifications in connection with the owner of
18 the property, but we also have to look to the ramifications to
19 the community as a whole. I think the special exception course
20 of action would allow the community to bring to this Board's
21 attention what it feels are the adverse impacts, if any. Perhaps
22 by the time that the community comes before the Board, there
23 could be some accommodation between the community and the owner
24 of the property, Father Flanagan, but it should be addressed.

25 It's a course of action that is right. It is the

1 best possible solution to this appeal. So, that is what I am
2 supporting.

3 CHAIRPERSON GRIFFIS: And I think that's well said,
4 Ms. Renshaw, but just to make absolute clarity, and I think you
5 will agree with me, that the Board doesn't just go to some sort
6 of variance for a special exception case because the community
7 might have opposition to a development.

8 VICE CHAIRPERSON RENSHAW: No.

9 CHAIRPERSON GRIFFIS: And certainly we don't look
10 for appeals based on a community's opinion of whether something
11 is right or not, but obviously that it's based strictly on the
12 regulations and if there was an error.

13 VICE CHAIRPERSON RENSHAW: And in this case yes.

14 CHAIRPERSON GRIFFIS: Okay. Others?

15 VICE CHAIRPERSON RENSHAW: Mr. Chairman I call the
16 question.

17 CHAIRPERSON GRIFFIS: Is there a second?

18 SECRETARY PRUITT: Mr. Chairman, I had Mr. Levy
19 making a motion and Ms. Renshaw seconded.

20 CHAIRPERSON GRIFFIS: I understand. She just
21 called the question. So, there's a new motion now before us.

22 VICE CHAIRPERSON RENSHAW: I called the question.

23 SECRETARY PRUITT: Oh, excuse me.

24 CHAIRPERSON GRIFFIS: And I would say it lacks --

25 SECRETARY PRUITT: Could you repeat that then so we

1 can make sure we get it?

2 CHAIRPERSON GRIFFIS: She called a question for
3 motion.

4 MEMBER LEVY: Mr. Chair, I think that there are
5 perhaps other members of the Board that are ready to weigh in.

6 CHAIRPERSON GRIFFIS: Indeed. I understand the
7 motion does not carry for lack of a second, and let us not rush
8 through. I don't mind a couple of seconds of silence if it gets
9 people in order to make some comments on this motion. I think
10 it's valuable enough, and I'll just fill the air time while you
11 gather your thoughts. It's valuable enough to spend the time to
12 focus and give people the opportunity.

13 COMMISSIONER HANNAHAM: Mr. Chairman?

14 CHAIRPERSON GRIFFIS: Yes, please, Mr. Hannaham.

15 COMMISSIONER HANNAHAM: Could the motion be
16 repeated? I've lost track of what --

17 CHAIRPERSON GRIFFIS: Indeed. We are still in
18 discussion. The motion is to grant the appeal at this point, and
19 it has been seconded. So, we are having people speak to the
20 motion.

21 MEMBER ETHERLY: Mr. Chair, thank you for that
22 pause, and I appreciate my colleague, Ms. Renshaw, allowing that
23 pause as well. We've gone through ad nauseam the grounds that I
24 think get us from where we were at the beginning of this case to
25 where we are now, so I'm not going to recount that in painful

1 detail.

2 I would just simply say that when you look at the
3 definition of community based residential facility, you have a
4 reference that dates back to 1977. I'm very sensitive. I'm very
5 perhaps most times sympathetic to practice and custom and all
6 that other good stuff, but there's a very clear reference in the
7 definition section, and I'm not too concerned by the fact that
8 everyone -- well, no, I am. I'm concerned about the fact that
9 everyone missed it, but it's there. It's a very clear path that
10 gets you from community based residential facility and youth
11 residential care home to a definition of facility.

12 In my opinion, when you look at the facts that have
13 been presented on the record, some by the Appellant, some through
14 direct and cross of the Appellee and other participants, you have
15 a conclusion here that speaks rather convincingly to the fact
16 that this is a single facility. I am very sensitive to your
17 concern that we're talking about, nevertheless "undoing" a
18 practice that is going to have severe ramifications and
19 implications, financial and otherwise, for a party before this
20 Board.

21 There are remedies that enable another bite out of
22 this rather familiar apple for all of us now, and I know that is
23 not a prospect that anyone is excited about, but I don't think
24 that should nevertheless deter this body from what, once again,
25 in my opinion at least, is a very clear pathway from where the

1 Appellant began to take us and where we are right now.

2 You have the definition of facility. If you follow
3 that definition along and you take another traipse through the
4 regulations that takes us back to 732, community based
5 residential facilities in the C2 zone, 732(1)(a) of course reads
6 that youth residential care home or community residence facility
7 for 16 to 25 persons, not including resident supervisors, yada,
8 yada, yada, subject to the standards and requirements of Section
9 350 of Chapter 3 of this title.

10 So, you have a starting point there, that if this
11 is indeed a facility that takes us to 24 persons, not including
12 staff and/or resident supervisors, that you then go to Section
13 358. Once again, as we all know, Section 358 then takes you
14 through a rather exhausted menu of items that need to be
15 addressed before this Board can render a decision of approval for
16 such a facility. There is the opportunity for that process to be
17 undertaken if it is so desired.

18 Of course, it is solely within the purview of the
19 parties before us to make a determination as to whether that's
20 appropriate. I can't let it go unsaid that it is not lightly and
21 in haste that this decision is made because of course,
22 substantial expense has already to some extent been forward.

23 On the issue of the argument regarding equitable
24 estoppel, I believe this Board has indeed provided an opportunity
25 for a party in this case, one of the Appellees, Girls and Boys

1 Town, to give some significant discussion and time to that issue.

2 You did reference, Mr. Chair, that both the District of Columbia
3 and one of its post-hearing filings, as well as Girls and Boys
4 Town did submit some documentation, or I should say some
5 statements to that effect.

6 Both of those submissions speak at length to this
7 issue of equitable estoppel in footnotes. I don't want to say
8 that just because the item is placed in the footnote, that gives
9 it any less weight than it would have if it were placed in the
10 body of the text of the briefing, but once again, there are some
11 statements, there is some language there that speaks to equitable
12 estoppel and some of the conditions that are outlined in prior
13 case law regarding what you need in order to avail yourself of
14 that argument, but the submission, I still find, is somewhat
15 wanting in terms of the factual data to support that.

16 Once again, that's not to say that substantial
17 money has not been spent. We know that it has been, but to
18 simply say that and not necessarily provide additional factual
19 information, in my mind, I think creates a void that I just can't
20 fill in at this particular juncture. That's with regard to the
21 issue of equitable estoppel. That doesn't mean that the
22 argument isn't there. That just means that the facts haven't
23 been put forth, I believe, to fill the meat in on that particular
24 bone.

25 As it relates to the issue of the prior BZA order,

1 we had substantial discussion prior to the break/lunch regarding
2 kind of where I stood on that, and I appreciated the guidance
3 that we received from corporation counsel, and I appreciate the
4 concern that was raised by the Chair and some of my colleagues.
5 I still believe that language doesn't necessarily paint this body
6 into a corner, but I have no reservation, I have no hesitation
7 say that if this body needs to be in a position where it says it
8 made a mistake, then so be it. That should not necessarily
9 hinder us from, once again, following what I believe is a very
10 clear path from the definitions contained in the zoning
11 regulations to the outcome that the maker of the motion is
12 seeking.

13 That being said, Mr. Chair, I'm prepared to move
14 forward with a vote on this matter. Thank you.

15 CHAIRPERSON GRIFFIS: Thank you, Mr. Etherly.

16 MEMBER LEVY: Mr. Chair?

17 CHAIRPERSON GRIFFIS: Yes.

18 MEMBER LEVY: I think it's important to reiterate,
19 obviously this is a very complex case with which we have all
20 struggled a great deal. We decided earlier today that we agreed
21 by consensus that the Zoning Administrator had erred in terms of
22 the definition of facility related to the definition of facility
23 and the fact that it was not applied, or that the improper
24 definition was applied.

25 The struggle comes then in -- the difficulty comes

1 in prescribing a remedy that's fair to all parties involved, and
2 I find myself with few options, frankly, in terms of remedies. I
3 understand your argument about -- well, with the expense of
4 repeating myself, I probably shouldn't continue.

5 I guess I just want to say that I've come to this
6 point of making this motion after having struggled through
7 consideration of the various options that are available, after
8 having struggled with what would be fair to all parties involved,
9 and I really just see this as the best way to proceed at this
10 point.

11 CHAIRPERSON GRIFFIS: Okay, and I appreciate that.

12 MEMBER LEVY: And also, I'm sorry. I wanted to
13 make the point that the Zoning Commission has set forth, and
14 perhaps I've said this, but a clear path. This is a situation
15 where we question whether it was four small facilities or one
16 large facility, and the Zoning Commission has made it very clear
17 that larger facilities are likely to have larger impacts, and
18 they set forth a process to deal with that. I think that's where
19 we should be heading.

20 CHAIRPERSON GRIFFIS: I think that's well said, and
21 I do think that the regulations and the Commission have
22 understood that and understood the impact that size and also
23 location might be, but have also -- well, that being said, have
24 looked at also the potential for smaller facilities fitting into
25 the community as more appropriate and fitting into the fabric.

1 I think it's an important piece that Mr. Etherly
2 brought up. I do not think if this Board wants to take a new
3 direction and we feel that it is strong and has substantive
4 direction to take, I would also support and advocate for that.
5 What my concern is, I have stated, is who pays the price for that
6 and the immediacy as we change for the future.

7 One could, I think,, make the case that we may not
8 see a situation like this again based on changes that may happen.

9 Who can predict that, but do we hold responsible and reliable a
10 party that has actually put faith and reliance in a process?

11 MEMBER ETHERLY: Mr. Chair, if I may, just to
12 piggyback on your comment, but also Mr. Levy's, I wish there were
13 a win-win scenario that we could find here. We've had
14 substantial conversation and deliberation around precisely what
15 the effect of any particular ruling in this matter would be, and
16 you know, I'm sure perhaps all my colleagues share that
17 sentiment, that if there were a win-win here, I wish we could
18 find it, but I just don't think there's any way to split the baby
19 here, proverbially speaking, of course.

20 Additionally, let me be sure to reference back to
21 our conversation earlier today regarding the Comprehensive Plan
22 because I think there is a need to clarify that particular
23 motion. As corporation counsel would certainly agree, I'm sure,
24 we have kind of certain clothing, certain raiment that we sit in
25 in an appeal setting, and to an extent, we sit as a Zoning

1 Administrator would have sat. So, there's a certain limitation
2 to the types of powers and the types of relief that we can
3 fashion in this matter.

4 Because of those limitations, the language of the
5 relevant D.C. Code section dictates that we are acting on this --
6 we're acting in an appellate capacity pursuant to certain
7 regulations and certain components of the D.C. Code, which do not
8 include the Comprehensive Plan. Perhaps that is an oversight or
9 a void that at some point will be addressed by the appropriate
10 body within the District of Columbia governmental infrastructure.

11 I think that would be an excellent thing to look
12 at, but I just wanted to kind of reiterate that while this body,
13 I believe, identifies some concern and some trouble with that
14 failure to look at the Comprehensive Plan, that we are
15 constrained and compelled to nevertheless know that that is
16 something with which we have no enforcement jurisdiction or
17 authority to remedy. I just wanted to kind of circle back around
18 on that particular point, Mr. Chairman, because I believe the
19 Comprehensive Plan, as all of us would agree, parties and Board,
20 is indeed something that is intended to serve as a guide for what
21 we are endeavoring to do here in the District of Columbia.

22 Were it the case that we all could act in some way
23 to support and uphold what that document is trying to do, it's
24 not something necessarily that's within our power at this
25 particular juncture. So once again, I just wanted to circle back

1 on that point, Mr. Chairman.

2 CHAIRPERSON GRIFFIS: Thank you.

3 VICE CHAIRPERSON RENSCHAW: Mr. Chairman?

4 CHAIRPERSON GRIFFIS: Yes.

5 VICE CHAIRPERSON RENSCHAW: In finding that the
6 Zoning Administrator erred in not looking at the definition of
7 facility, there is going to be a fall-out here, and it comes back
8 to who's paying the price. The property owner, Father Flanagan,
9 went ahead and proceeded at his own risk. The community brought
10 the matter to the city's attention, and to the owner's attention.

11 So, we are hearing today. We're making a decision on a remedy.

12 Again, Mr. Etherly has said this is very difficult.

13 We can't split the baby. The only remedy is to, in my opinion,
14 is to vote for the appeal and just indicate that a special
15 exception might be a route for the Appellants to bring any
16 further statements to the Board because they feel that the
17 community is aggrieved by this project.

18 So, once again, I would ask that at this point, we
19 call the question and vote, if I have a second.

20 CHAIRPERSON GRIFFIS: I don't like to rush along
21 here.

22 MEMBER ETHERLY: So seconded, Mr. Chairman.

23 CHAIRPERSON GRIFFIS: Second. There's a motion on
24 the table to call the question which would then force the vote of
25 the original motion. All those in favor?

1 (Chorus of ayes.)

2 CHAIRPERSON GRIFFIS: I would assume by the
3 unanimous vote of that that there is no other discussion needed.

4 So, that being said, I would ask for all those in favor of the
5 motion before us and seconded, signify by saying aye.

6 (Chorus of ayes.)

7 CHAIRPERSON GRIFFIS: And opposed?

8 (No response.)

9 CHAIRPERSON GRIFFIS: I will vote abstaining.

10 MR. HART: Staff would call the vote as four to
11 zero to one to grant the appeal No. 16791 of Southeast Citizens
12 for Smart Development, Inc. in ANC 6-B. The motion was made by
13 Mr. Levy, seconded by Ms. Renshaw.

14 Thank you.

15 SECRETARY PRUITT: I believe there's a second
16 motion in which you abstained?

17 CHAIRPERSON GRIFFIS: The large motion is what we
18 really need to record.

19 SECRETARY PRUITT: Okay.

20 MR. HART: So, it's 4-0-1 with the abstention being
21 the Chairperson, Mr. Griffis.

22 CHAIRPERSON GRIFFIS: Good. Thank you very much,
23 Mr. Hart, and let me say a couple of quick things before we end
24 this and wrap it up. First of all, I absolutely appreciate the
25 Board's attention and deliberation on this. This has been

1 exhausting, and I think it was important to do, and I'm satisfied
2 that the Board was able to decide this. I think it goes without
3 saying, my abstention was based on the fact of changing course of
4 a relied upon process.

5 That being said, I think we can fairly assume if
6 one assumes the next step process for this, it may well be a
7 special exception for this, and I think perhaps the Board could
8 say that we would look at that, any sort of special exception
9 application without prejudice to any other appeal or any other
10 process that is happening on any of the parties' sides. Unless
11 anyone wanted to comment on that, I'll take that as fairly a
12 consensus.

13 Lastly, I think, unless others have other issues,
14 we had a number of evidence and testimony that we had spent hours
15 on in the beginning, some submitting into the record, some
16 denying from the record, but the importance of this right now is
17 that we defer. I would suggest rather than going through each
18 and every item that we had deferred, note for the record that we
19 have or will in the order express what was accepted and what was
20 rejected from the record in order for our deliberations.

21 I think it can be plainly said that the Board was
22 all consistent in terms of what was taken and what was not in our
23 own deliberations. So, we will have that announced in the order.

24 Is there anything else I am forgetting to deal with
25 at this point?

1 MEMBER ETHERLY: Mr. Chair, I'll just simply say
2 for the record, of course, that without sounding too self-
3 serving, though, but your leadership and your ability to kind of
4 negotiate us through this process has been greatly appreciated.
5 Thank you.

6 CHAIRPERSON GRIFFIS: Thanks, and the day is not
7 over, Mr. Etherly. So, we'll keep the compliments for the end.

8 I thank all of you for being so patient and sitting
9 through this for the entire day, and you're excused, unless you
10 have other cases, as we are at our second case of the morning,
11 and I think we have four or five more to go.

12 So, without further ado, I think we can get right
13 into the next case, Mr. Hart, when you're ready, of course.

14 MR. HART: The next case of the afternoon is
15 Application 16826 of City Gate, pursuant to 11 DCMR Section
16 3104.1 for a special exception to permit church programs under
17 Section 216, in the SSH/R-1-B District at Premises 5917 16th
18 Street, N.W. in Square 2724, Lot 9.

19 At its February 12, 2002 public hearing, the Board
20 indicated that a substantial number of new exhibits had been
21 submitted late into the record, and additional time would be
22 needed to study the information. The Board scheduled the hearing
23 to February 19.

24 At its April 2 public meeting, the Board determined
25 that additional information was needed prior to making a final

1 decision. Subsequently, the decision was postponed to this
2 meeting, May 7, 2002. The Applicant submitted the requested
3 information, which includes a motion by Calvary Baptist Church to
4 respond to the establishment of City Gate. See Exhibit No. 44.
5 That's not reading right.

6 Participating Board members are Mr. Griffis, Mr.
7 Levy, Mr. Etherly, and Mr. Hannaham. Application is now before
8 the Board.

9 CHAIRPERSON GRIFFIS: Thank you very much, Mr.
10 Hart. Ms. Renshaw is not on this case, so I think we'll take a
11 breather, if you so desire, and we will call you back when we get
12 through this.

13 As Mr. Hart has outlined, we did ask for additional
14 information that has been put into the record. Board members, as
15 you recall in reviewing the record and also in the testimony,
16 there was the discussion and issues regarding Section 216, and
17 also in the overlay, the 16th Street overlay, and I think it's
18 important to walk through a few of those issues.

19 One, if I'm not mistaken, and please chime in as I
20 misstep here. The additional information was trying to establish
21 whether this was a church program, the City Gate. I think that
22 the document will show in the record that this is part of the
23 consortium of churches that have come together to establish and
24 administer the church program, which I think satisfies the
25 Section 216 in terms of determining whether it was City Gate as a

1 church program.

2 The other issue I think we need to decide is
3 whether the existing structure is a continuing church use, which
4 puts us into the discussion of an existing use or whether it
5 actually ceased and then would have to come to us as a new non-
6 residential use, which would kick into the overlay. Then, of
7 course, I think we need to look at balancing on the use, is it an
8 expanded use, and therefore, how are we looking at the parking
9 spaces that are required in order to grant relief or the special
10 exception to permit the church program in this facility.

11 Does that all refresh everybody's recollection well
12 enough to start some deliberation? I know it's hard to change
13 course so dramatically after spending six hours on one
14 deliberation. Are there any issues people want to bring up?

15 MEMBER LEVY: Mr. Chair?

16 CHAIRPERSON GRIFFIS: Yes.

17 MEMBER LEVY: On the issue of -- well, I don't know
18 if I'm jumping ahead on new use versus existing use, but one of
19 the things that we need to consider is whether the future use or
20 the upcoming use or the proposed use is more intensive than a
21 previous use.

22 CHAIRPERSON GRIFFIS: Right.

23 MEMBER LEVY: I think we have a pretty clear layout
24 of what the intended use is going to be. What I'm troubled by is
25 what to compare that to, given that we do not have, I don't

1 believe, great detail on the intensity of the previous use. We
2 know that it was a church use and one could presume that certain
3 functions took place in the church use, but we don't have a good
4 idea of what all of those functions might have been. So, I think
5 it's difficult to characterize this as a use that's more intense
6 than a previous use.

7 CHAIRPERSON GRIFFIS: So, you're having difficulty
8 making that comparison in order to establish whether it's an
9 increase or not?

10 MEMBER LEVY: Right.

11 CHAIRPERSON GRIFFIS: And does just the base square
12 footage of the existing house, which won't be changing, and the
13 past, let's call it institutional but church use, give any
14 guidance to you in comparison?

15 MEMBER LEVY: Well, you know, it's the same amount
16 of square feet. You could presume that uses may be similar. I
17 guess what I don't know how to deal with is, you know, was the
18 facility used six days a week, seven days a week, one day a week,
19 just in the morning or all day long. So, I don't have any
20 evidence telling me, I guess, that the new use is more intensive.
21 So, I guess that's what I would go on.

22 CHAIRPERSON GRIFFIS: And the use that you're
23 talking about actually is going to the adverse impact on the
24 land, correct?

25 MEMBER LEVY: Absolutely.

1 CHAIRPERSON GRIFFIS: In terms of going to the
2 parking and how to establish what would be appropriate or what
3 would not be an adverse impact?

4 MEMBER LEVY: Absolutely.

5 CHAIRPERSON GRIFFIS: Okay.

6 MEMBER LEVY: Specifically to the parking. I
7 should have made that clear.

8 CHAIRPERSON GRIFFIS: No, that's fine.

9 MEMBER LEVY: As you said, it's tough to change
10 gears.

11 CHAIRPERSON GRIFFIS: Yes, indeed. Do you have in
12 front of you the proposed use population?

13 MEMBER LEVY: I do, I believe. I did. Oh, I do.
14 The Applicant proposes two different programs, one during the
15 school year and one during the summer. The school year programs
16 would take place Monday through Friday. There are various
17 programs, three that are listed here, actually. An ESL class
18 from 9:30 to noon, an after school tutoring program from 3:30 to
19 5:30 p.m. Then Monday through Thursday, only an ESL class from
20 7:00 to 9:00 p.m. So, some activity on site between the hours of
21 9:30 and 9:00, six days a week, or excuse me, five days a week.

22 Then on Saturday from 9:30 to 4:00, a children's
23 culture/language program. The numbers of students vary from ten
24 to 20, depending on which program we're looking at, and between
25 two and six volunteers.

1 The summer programs are showing Monday through
2 Friday, 9:30 to noon ESL class, or children's enrichment program,
3 1:00 to 5:30 p.m., children's enrichment program 7:00 to 9:00
4 p.m., Monday to Thursday only. ESL class with a Saturday
5 children's culture/language program 9:30 to 4:00.

6 So, again, the intensity of use appears to be six
7 days a week, Monday through Friday, generally between the hours
8 of 9:30 a.m. and 9:00 p.m. and Saturday 9:30 a.m. to 4:00 p.m.
9 So, again very good detail on the intended use but no such detail
10 on the previous use to look at intensity.

11 CHAIRPERSON GRIFFIS: Although don't we have a
12 previous certificate of occupancy for up to 75 persons?

13 MEMBER LEVY: I believe we do have.

14 CHAIRPERSON GRIFFIS: That there was -- the house
15 was configured for actual religious services. If I'm not
16 mistaken, they had a population intended to that.

17 MEMBER LEVY: Right, less than or equal to 75
18 persons. Based on that, the Applicant is making the case that
19 this is a less intensive use, according to my notes from February
20 19.

21 CHAIRPERSON GRIFFIS: Okay. Well, and the ANC had
22 some issues regarding the overlay district, potential turnover,
23 the lack of adequate off-street parking, which is kind of what
24 we're talking about now.

25 MEMBER LEVY: Yes, they were worried about turnover

1 and keeping track of who should or should not be there at any
2 given time. They were generally concerned about the number of
3 institutional uses in the area.

4 CHAIRPERSON GRIFFIS: Right.

5 MEMBER LEVY: They also testified that it should be
6 treated as a change in use, which I would agree with from the
7 previous use.

8 CHAIRPERSON GRIFFIS: A change?

9 MEMBER LEVY: Well, it was a change in use from the
10 previous. Bear with me a second.

11 CHAIRPERSON GRIFFIS: You don't think it's the same
12 church program use?

13 MS. SANSONE: Mr. Chairman, perhaps I could help
14 out. The previous certificate of occupancy was for a church, and
15 then they had religious and clerical workers residing on the
16 upper floors, but they never obtained a special exception or
17 certificate of occupancy for a church program.

18 CHAIRPERSON GRIFFIS: Oh, I see.

19 MS. SANSONE: And the Zoning Regulations continue
20 to make a distinction between churches and church programs.

21 MEMBER LEVY: Thank you, Ms. Sansone.

22 CHAIRPERSON GRIFFIS: I see.

23 MEMBER LEVY: I'm not, however, questioning that
24 these are church programs being conducted.

25 CHAIRPERSON GRIFFIS: Okay. Well, why don't we do

1 this then. Why don't we run down 216 and discuss any that we
2 think that are not complied with, perhaps that are of issue.

3 The church program should not be organized for
4 profit. I think the record shows clearly that this is not for
5 profit.

6 The church program conducted on the property should
7 be carried on within the existing church building. I think there
8 is evidence to show that church program within, as established,
9 the church building is in compliance with 216.3.

10 MEMBER LEVY: I think it's important to note there
11 that the building was previously used as a church. It's
12 configured as a church presently.

13 CHAIRPERSON GRIFFIS: Right. There was also
14 record, if I'm not mistaken -- I don't have it at my fingertips,
15 that at least 75 percent of the staff were volunteers.

16 MEMBER LEVY: And all the staff are being listed as
17 volunteers.

18 CHAIRPERSON GRIFFIS: Right.

19 MEMBER LEVY: One hundred percent, I believe.

20 CHAIRPERSON GRIFFIS: There was an issue that came
21 up with a sign, and if I'm not mistaken, there was testimony by
22 the Applicant that they would remove and not place any signs on
23 the building.

24 MEMBER LEVY: Right.

25 CHAIRPERSON GRIFFIS: Is that your recollection

1 also, or do you need me to find it?

2 MEMBER LEVY: I don't recall what the testimony
3 was. I believe the regulations requires

4 --

5 CHAIRPERSON GRIFFIS: 216.5, or rather 216.6
6 indicates no signs are displayed indicating location of church
7 programs shall be located on the outside of the building or the
8 grounds. 216.7 Indicates that the Board, if approved, it will be
9 limited to a matter of three years and renewed at the discretion
10 of the Board.

11 So, let me streamline this perhaps a little bit. I
12 think there is fairly strong evidence on the record that supports
13 this special exception to permit church programs under 216.
14 However, what I think we need to flush out, Mr. Levy, is what you
15 were going to, and that is there are three existing parking
16 spaces on site, and I guess they have access to others.
17 Providing the fact that the building was built before May 12,
18 1958, we go to the issue of whether there was an increased use in
19 this new occupant of the building and whether we should be
20 looking at parking as required under Chapter 21 or not.

21 Frankly, it's even more open than that because I
22 think we have to determine -- Ms. Sansone, correct me if I'm
23 wrong, or anyone else. I think we have to determine what is
24 appropriate for parking because it is not specifically outlined
25 in terms of church program use in the schedule for parking

1 requirements. Is that correct, Ms. Sansone?

2 MS. SANSONE: Mr. Chairman, the question of how to
3 interpret the schedule in Chapter 21 is subject to several
4 interpretations and difficult. There is no requirement in that
5 schedule for church programs; however, as a special exception,
6 the Board could determine whatever amount of parking or location
7 or other conditions it felt were needed in order to make sure
8 there were no adverse impacts. That's probably the easiest way
9 to approach it.

10 CHAIRPERSON GRIFFIS: Right.

11 MS. SANSONE: The previous church itself, because
12 it was in place prior to the time the regulations were amended to
13 require parking for -- at one point, the regulations specified
14 there was no requirement for churches, which presumably carried
15 through to church programs. So, to that extent, there's probably
16 some grandfathering, but because this is a special exception
17 under both 16th Street overlay and Section 216, either one of
18 those would give you an avenue to insure that there was adequate
19 parking provided or that the Applicant was making sure it was
20 operating in a way that it was not causing parking problems.

21 MEMBER LEVY: Mr. Chair, District Division of
22 Transportation is indicating there are three parking spaces on
23 site, two in a private garage and additional parallel space
24 between the garage and the alley, which I assume is on the
25 property. That would make a total of six existing spaces.

1 CHAIRPERSON GRIFFIS: Okay.

2 MEMBER LEVY: And I believe the regulations require
3 screening for parking spaces if there are more than five
4 provided, screening from contiguous residential property.

5 CHAIRPERSON GRIFFIS: Yes, I think that one will be
6 kind of difficult to put into place, as you've just described the
7 location, although that obviously seems to assume that there are
8 five, you know, directly adjacent or on the same site, that
9 clearly several, if not three --

10 MEMBER LEVY: I'm sorry. Let me just --I could
11 just clarify that. It's five or more open parking spaces.

12 CHAIRPERSON GRIFFIS: Okay.

13 MEMBER LEVY: So, it wouldn't include the two in
14 the garage.

15 CHAIRPERSON GRIFFIS: Okay.

16 MEMBER LEVY: Sorry about that.

17 CHAIRPERSON GRIFFIS: That's okay. The Applicant's
18 testimony in the case was that the parking requirement wouldn't
19 apply because this is an existing use, existing building. So, if
20 we didn't have lengthy discussions on the opportunity for
21 providing parking elsewhere or the possibility of providing
22 parking or the population that would not require the parking.

23 MEMBER LEVY: I think the Applicant testified to
24 the fact that there was adequate on-street parking along the
25 property of the church, but not to any other available off-street

1 parking.

2 CHAIRPERSON GRIFFIS: Okay, right.

3 MEMBER LEVY: They also testified they had no
4 intentions of using the facility for regular church services,
5 which would attract as large a crowd as perhaps the church did
6 prior.

7 Office of Planning is suggesting a parking
8 requirement of two spaces tied to the residential uses in the
9 upper floors of the building.

10 CHAIRPERSON GRIFFIS: Which they have, correct?

11 MEMBER LEVY: Right, and they have at least five
12 and perhaps six, I think. There's two in the garage, three on
13 site. Six, I believe.

14 The Division of Transportation is indicating that
15 the on-street spaces are five in number and exist along
16 Ogelthorpe Street and that non-rush hour parking is also
17 available on the street along 16th Street. They indicate as well
18 that public transportation is available on 16th Street.

19 CHAIRPERSON GRIFFIS: Right.

20 MEMBER LEVY: There is a discrepancy here. This is
21 a D Dot report dated January 30 that cites only two parking
22 spaces -- well two parking spaces for residents of the property
23 plus an additional parallel space between the garage and the
24 alley. So, that contradicts what I just read, I think from the
25 OP report.

1 In any case, what it comes down to in my mind is
2 whether or not the opposition presented a case that there would
3 be a specific adverse impact. They talked about intensity of use
4 without really tying it, I think, directly to the issue of
5 parking or specifically, to the issue of pick up and drop off or
6 what the adverse impacts might be. So, I have a bit of a problem
7 getting there from here. I think I would be inclined to give
8 this a try, at least for an interim period and see how it
9 operates.

10 CHAIRPERSON GRIFFIS: And I think that makes some
11 sense in that the Applicant has actually addressed an awful lot
12 of the adverse impacts that were brought up and indicated. As
13 you've stated one, the parking around the area, but they also
14 indicated that the parking needs would be minimal, as they
15 anticipated many of the participants were coming from the local
16 community and walking to the building, and of course, as you
17 said, public transportation.

18 I have some concern that the hours of operation and
19 the numbers of students in each of those, the population. Now, I
20 know and recall directly the testimony that that was an
21 opportunity of time, an opportunity of students, not that from
22 9:30 in the morning until 9:00 at night there will be anywhere
23 from ten to 15 to 20 students in the building. It may, in fact,
24 be for an hour between 9:30 and noon, and maybe an hour at seven
25 or so. So, that lessens my concern, I think, for the overall

1 population that will be coming and going out of the building.

2 I think in the short term that they have scheduled
3 and the outline of the programs, be it after school tutoring or
4 ESL class, gives rise to the fact that folks will either get
5 there on their own, public transportation, or be dropped off for
6 a brief period of time, and not have -- one, the age will give us
7 an idea that probably a lot won't be driving perhaps.

8 Okay, and I think going to address the intensity of
9 use. Mr. Levy, I think you hit on a little bit of a problem of
10 how we compare that. I think where I go in my deliberation is
11 looking at the fact that the square footage of the building is
12 not expanding. That would give clearly an indication that there
13 was a potential use expansion also in terms of number of
14 occupants in the building.

15 Secondly, that we do have information that there
16 was a C of O for a minimum of 75 people. If you look at the
17 programs at City Gate, and perhaps we condition it if we need to,
18 but clearly they're not anticipating those kinds of numbers at
19 one period of time, as I would think the larger impact and
20 adverse impact would be 75 to 80 people, let's say, coming to one
21 event at one time, as opposed to ten for a morning or, you know,
22 a limited number during the afternoon.

23 So, with that, I would be prepared -- in fact, let
24 me -- I guess we can pick it up if there's any other case, but I
25 would move that we approve Application No. 16826 of City Gate for

1 a special exception to permit the church programs under Section
2 216 in the SSH/R-1-B District, Premises of 5917 16th Street, N.W.
3 My motion would carry the condition of three years.

4 MEMBER LEVY: I'm going to second your motion.

5 CHAIRPERSON GRIFFIS: You're going to, or you did?

6 MEMBER LEVY: I do second your motion.

7 CHAIRPERSON GRIFFIS: Okay, good.

8 MEMBER LEVY: Looking back, though, at the
9 regulations, is there anything else we need to address in the
10 motion?

11 CHAIRPERSON GRIFFIS: That's what I was scrambling
12 for myself. Unless we -- oh, thanks. Unless we think that we
13 want to condition it or additionally condition the order, I think
14 it's clear obviously in this that they will uphold the entire
15 section of 216. I don't think we obviously need to condition
16 signs of any sort. That is part of the regulation.

17 MEMBER LEVY: Right.

18 CHAIRPERSON GRIFFIS: I don't see the possibility
19 of screening the parking. We're looking at one exterior -- oh,
20 actually, I guess I would make the additional clarification if
21 not a condition that the two parking spaces -- that was OP's
22 condition wasn't it? The two parking, or all the parking spaces
23 be made available and usable for the proposed use in the
24 building.

25 So, therefore, I guess the assumption is if the

1 garage is actually boarded up and non-usable, that it will be
2 brought back to a usable state, and that's pure speculation. I
3 don't remember that on the record at all.

4 MEMBER LEVY: So, the motion is that all the
5 parking spaces that are available now on site be made available
6 for the new use?

7 CHAIRPERSON GRIFFIS: Correct.

8 MEMBER LEVY: I would continue to second that. Any
9 consideration of a period less than three years? Are there any
10 concerns with the community that would lead you to shorten that
11 time period?

12 CHAIRPERSON GRIFFIS: I don't tend to go in that
13 direction, only because I don't think that the adverse impact
14 that we're talking about were so strongly objected to or evident,
15 that we would necessarily -- that it would bring it to a level
16 that would necessarily need an immediate remedy, and that would
17 be bringing back for special exception within, you know, two
18 years or so.

19 I also hold strongly in the wisdom of the
20 regulations that indicate at three year period, clearly that it
21 was deliberated on by the Commission and was felt that it would
22 be appropriate in terms of timing. So, I don't think the record
23 gives me any direction in terms of limiting that time.

24 MEMBER LEVY: I would simply just point out, and
25 this again is part of Section 216, specifically 216.5, that the

1 operation of the program shall be such that is not likely to
2 become objectionable in the resident's district because of noise
3 and traffic.

4 CHAIRPERSON GRIFFIS: Right, but in that same, it
5 seems to anticipate the remedy for that, in 216.7, which outlines
6 the authorization of the Board shall be limited to a period of
7 three years.

8 MEMBER LEVY: I would agree.

9 CHAIRPERSON GRIFFIS: You know, I think based on
10 the fact that that is an indication, I mean, clearly operation
11 should not be objectionable gives, in fact, a remedy or relief to
12 a community. If they found it objectionable, they could go to
13 the appropriate government agency and note that there is a
14 noncompliance with the order and the regulations.

15 MEMBER LEVY: And just a clarification, Mr. Chair,
16 it appears that there actually are three on-site parking spaces.
17 So, a condition of the order then is to require those three to
18 be made available for the use, correct?

19 CHAIRPERSON GRIFFIS: Right.

20 MEMBER LEVY: Okay.

21 CHAIRPERSON GRIFFIS: Okay, anything else on that
22 then? Any other issues? Anything we've forgotten?

23 The motion is before us and seconded, so I would
24 ask for all those in favor of approving the City Gate special
25 exception to signify by saying aye.

1 (Chorus of ayes.)

2 CHAIRPERSON GRIFFIS: And opposed?

3 (No response.)

4 MR. HART: The staff records the vote on the City
5 Gate Application 16826 as five to zero to approve, Mr. Griffis
6 making the motion, Mr. Levy seconding, with two conditions, one
7 being for three years, and the other one stating that the
8 available parking, which at this point is three spaces, will be
9 available for the new use.

10 CHAIRPERSON GRIFFIS: Thank you, Mr. Hart. I think
11 you better just keep us going.

12 MS. BAILEY: Excuse me, Mr. Chairman, are we doing
13 a summary order on this case?

14 CHAIRPERSON GRIFFIS: I would assume so, or is that
15 not the case?

16 MS. SANSONE: Mr. Chairman, there was --

17 CHAIRPERSON GRIFFIS: Oh, there was opposition.

18 MS. SANSONE: Opposition from the ANC in this case,
19 so we won't be able to.

20 CHAIRPERSON GRIFFIS: Thank you for that
21 clarification, in which case we'll do a full order.

22 MR. HART: The next case is 16710 of Vinay Pande,
23 pursuant to 11 DCMR 3104.1 for a special exception under Section
24 223 to allow the construction of a canopy over a driveway and
25 stairway leading to a single family dwelling that does not comply

1 with the side yard requirements under Section 405 in an R-1-B
2 District at premises 5210 Klinge Street --

3 CHAIRPERSON GRIFFIS: I'm sorry, Mr. Hart, can I
4 interrupt you?

5 MR. HART: Yes, sir.

6 CHAIRPERSON GRIFFIS: I'm terribly sorry. I think
7 a schedule change has happened with that, and I believe we're
8 dealing with that a week from today, if I'm not mistaken. Does
9 that have that in their notes also? Isn't that what we shuffled
10 around?

11 MR. HART: The 14th?

12 CHAIRPERSON GRIFFIS: Oh, no, no. I'm sorry,
13 forgive me. My mind was not clear. The issue was in order to --

14 MEMBER LEVY: We moved the afternoon case. I'm
15 trying to remember. We rescheduled the afternoon case for next
16 week. I remember that.

17 CHAIRPERSON GRIFFIS: Yes, I know, but the Pande
18 case we weren't going to decide today because we have a Board
19 member that needs to read the record.

20 MEMBER LEVY: Right, right.

21 CHAIRPERSON GRIFFIS: Not the record, I'm sorry.
22 We have a motion to rehear the case, and the issue is Mr. Etherly
23 was not part of that case. He was given the transcripts late in
24 this week. He needs to read the transcripts in order to decide,
25 which he will, on the motion, and that is what we will pursue at

1 that point. So, without having him read the testimony, the
2 transcript rather, we can't have a ruling on Pande today.

3 MR. HART: May 14.

4 CHAIRPERSON GRIFFIS: Right, on the 14th we'll do
5 it.

6 MR. HART: There's one case left. Is that going to
7 also, hopefully -- Mr. Chair, that leaves us with the Charles
8 Holliday case.

9 CHAIRPERSON GRIFFIS: I'm sorry, could we just take
10 a minute, Mr. Hart?

11 MR. HART: Yes, sir, certainly.

12 (Whereupon, the foregoing matter went
13 off the record at 3:49 p.m. and went
14 back on the record at 3:50 p.m.)

15 CHAIRPERSON GRIFFIS: Yes, sir.

16 MR. FINNEY: Could I make one comment?

17 CHAIRPERSON GRIFFIS: Certainly.

18 MS. BAILEY: Sir, you need to talk into the
19 microphone, please.

20 MR. FINNEY: I think that the thing that I was
21 given led me to believe that you were to make a decision today.

22 CHAIRPERSON GRIFFIS: Right, you just --

23 MR. FINNEY: As a matter of fact, that's what it
24 says. It says that Mr. Etherly has been provided with a complete
25 record for this case and is prepared to participate.

1 CHAIRPERSON GRIFFIS: Correct.

2 MR. FINNEY: That would seem to be today, fair
3 reading. It says the application is now before the Board for a
4 decision.

5 CHAIRPERSON GRIFFIS: Yes.

6 MR. FINNEY: Or which suggests something was going
7 to happen today, and I must say, I feel very, very frustrated.

8 CHAIRPERSON GRIFFIS: Indeed, and I do owe you an
9 apology for not telling you when we did know that. It came up in
10 discussion well after 2:00 when we were in executive session
11 that, in fact, there was a technical difficulty that precluded
12 Mr. Etherly from completing the entire reading that he needed to.

13 We had all assumed coming into this that he was prepared, that
14 we would have a full Board and able to vote on the motion to
15 rehear this case.

16 We thought that it would be best not to waste time
17 in the day to try and get that done, for Mr. Etherly to read it,
18 obviously holding up the rest of the schedule. The quickest and
19 most expeditious way would be to move it to next week.

20 MR. FINNEY: May I ask whether Mr. Etherly has read
21 the transcript?

22 CHAIRPERSON GRIFFIS: He has received today what he
23 needed to, which was not available to him at that time. So, we
24 will absolutely -- I'll check in with him Sunday evening to make
25 sure that he's done his reading for Tuesday, the deciding. I

1 think it was not a fault of --

2 MR. FINNEY: It's not quite accurate when it says
3 he was provided.

4 CHAIRPERSON GRIFFIS: No, and as I say, there -- he
5 was provided what he needed. I think there was some lacking in
6 his understanding of perhaps what needed to be reviewed and read,
7 and also in terms of the timeliness available to him based on our
8 schedule and what you've seen us go through today. As you can
9 understand, quite a bit of what most of our time has been spent
10 in terms of reading, I can also say that reading transcripts is
11 not the most exciting piece, but nonetheless, we were
12 anticipating.

13 There was some miscommunication in terms of getting
14 that totally fulfilled, but we will not have that problem on
15 Tuesday next. We can guarantee you that we will do something
16 with this at that point.

17 MR. FINNEY: May I ask whether you have admitted
18 into the record a statement that I sent you dated April 19, 2002?

19 CHAIRPERSON GRIFFIS: Yes, it is in the record, and
20 it is Exhibit No. 53.

21 MR. FINNEY: Thank you.

22 MS. SANSONE: There are some legal issues involving
23 whether the Board should accept that into record.

24 CHAIRPERSON GRIFFIS: I see.

25 MS. SANSONE: You will have to, if you wish to

1 accept it, the Board will have to waive certain of its rules.

2 CHAIRPERSON GRIFFIS: Correct. Okay, and that's
3 something that we will take up as preliminary matters when we
4 call the case.

5 MR. FINNEY: May I ask, on the 14th, will any of
6 the parties be permitted to talk?

7 CHAIRPERSON GRIFFIS: I would assume that we will
8 not call any of the parties to speak, but I would reserve the
9 right to have clarification by the parties. I think what we've
10 had and what I've reviewed so far is fairly straightforward, and
11 our deliberative process can be based on what is submitted to the
12 record. I think that is my anticipation of what would happen.

13 MR. FINNEY: Well then I can only emphasize how
14 important it is I think that my statement be admitted into the
15 record.

16 CHAIRPERSON GRIFFIS: Good. Well, thank you very
17 much, and again --

18 MR. FINNEY: And then you won't really need me next
19 week, will you? You'll be spared me.

20 CHAIRPERSON GRIFFIS: We would love to see you
21 again, but we certainly don't require you to spend the rest of
22 the day looking at us. Again, I apologize for not telling you
23 immediately when we had figured out the scheduling problem.

24 MEMBER LEVY: If I could, Mr. Chair, I'd just like
25 to weigh in on that as well. We are sincerely sorry. We've had

1 a, as you know, a very tough decision making day, a lot of
2 difficult cases, and it certainly wasn't our intention to have
3 you sitting around for no reason today.

4 VICE CHAIRPERSON RENSHAW: Mr. Chairman, if Mr.
5 Finney decides to be with us next week, which is an option, of
6 course, is there a definite time when this case will be called so
7 that he does not sit around, as today, wondering when the case
8 would be called?

9 CHAIRPERSON GRIFFIS: Ms. Renshaw, you were asking
10 when we would call this case?

11 VICE CHAIRPERSON RENSHAW: Yes.

12 CHAIRPERSON GRIFFIS: I think Ms. Pruitt has
13 brought up an excellent point, that we will actually set this for
14 a special look meeting on the 14th, and it will be at 9:00 a.m.
15 So, it will be on our schedule early. We'll give it top billing.

16 VICE CHAIRPERSON RENSHAW: Good.

17 CHAIRPERSON GRIFFIS: You can't get bumped from
18 other cases because you're the first in the day.

19 VICE CHAIRPERSON RENSHAW: It will be on the
20 marquis.

21 MEMBER ETHERLY: Mr. Chairman, just to reiterate,
22 Mr. Finney, we do apologize for the misunderstanding. I will
23 assure you that I will have the transcript in hand and will have
24 it read. It's interesting to note that this case not only
25 involves this particular staff with regard to the transcript, but

1 it goes to the substance of the matter, as it is about whether or
2 not I get to hear it again. So, we apologize, Mr. Finney, and we
3 look forward to seeing you next week.

4 MR. FINNEY: Thank you very much.

5 CHAIRPERSON GRIFFIS: Okay, that takes us to -- I
6 believe we have -- do we want to deal with Holliday next? Gosh
7 darn it, where are my notes?

8 MEMBER ETHERLY: Mr. Chair, while we're getting set
9 up for the next case, I will just make a very quick note that we
10 will be losing one of our kind of honorary staff members, one of
11 our able-bodied personnel who assists us with the recording of
12 our proceedings, will be leaving us, effective the end of this
13 week to pursue greener pastures, no pun intended, with the
14 National Geographic Society. I'm sure all my colleagues will
15 join in wishing her all of the best and much success in her new
16 endeavors. Thank you, Mr. Chair.

17 CHAIRPERSON GRIFFIS: The recorder.

18 MEMBER LEVY: It couldn't possibly be as much fun
19 as this, for sure.

20 CHAIRPERSON GRIFFIS: Okay. Am I correct, we can
21 call Holliday, because we do have one issue that we need to deal
22 with within that case, or maybe several?

23 MR. HART: We are going to call the Holliday case,
24 Application No. 16854 of Mr. and Mrs. Charles Holliday, pursuant
25 to 11 DCMR Section 3103.2 for a variance from the lot occupancy

1 requirements under Section 403, and a variance from the minimum
2 width requirements under Section 401, for the construction of a
3 flat in the CAP/R-4 District at Premises 315 East Capitol Street,
4 S.E., Square 787, Lot 35.

5 The Applicant withdrew the variance for lot
6 occupancy. Therefore, relief is sought only from the minimum lot
7 requirement. The Applicant indicated that based on discussions
8 with community residents and the Historic Preservation Review
9 Board staff, the project has changed since it was originally
10 filed with the Board. The project's latest revision was filed at
11 the hearing.

12 During the hearing, attorney Richard Nettler
13 requested that the application be dismissed because the Applicant
14 failed to meet the practical difficulty test. The Board, by
15 consensus, denied Mr. Nettler's request.

16 The case is now before the Board today for a
17 decision. The participating Board members are Mr. Griffis, Ms.
18 Renshaw, Mr. Levy, Mr. Etherly, and Mr. Hannaham.

19 CHAIRPERSON GRIFFIS: Thanks, Mr. Hart. There are
20 two preliminary matters, Board members, that we're aware of.
21 There may be more. My understanding is that we have a judgment
22 to make on an existing party status, and that is one of James D.
23 Warlick in our possession in the record. We have a writ of
24 possession in aid of court order which, if I'm not correct,
25 actually is an entitlement for immediate possession by a trustee,

1 meaning, unglorified perhaps, that Mr. Warlick is moving out of
2 the property.

3 Therefore, it is indicated that, in fact, he would
4 not have any rights under the party status that we bestowed on
5 him, and then we could remove him. I guess we could have a
6 motion to terminate Mr. Warlick as a party in the Holliday case.

7 I'd as for a second on that.

8 VICE CHAIRPERSON RENSHAW: I so move.

9 CHAIRPERSON GRIFFIS: Thank you. Any discussion?
10 Anything I'm missing, wordings that we need to redefine?

11 MEMBER LEVY: We need a second. I'll second it.

12 CHAIRPERSON GRIFFIS: Oh, very well. Then all
13 those in favor?

14 (Chorus of ayes.)

15 CHAIRPERSON GRIFFIS: And opposed?

16 (No response.)

17 MR. HART: The staff will record the vote of the
18 motion to terminate Mr. Warlick as a party, motion made by Ms.
19 Renshaw, seconded by Mr. Levy, five to zero.

20 CHAIRPERSON GRIFFIS: Thank you, Mr. Hart. Okay,
21 we also have a motion by the Applicant for a continuance for 120
22 days. Briefly stated, it is for continued work in terms of
23 preparation of the construction drawings design and also
24 obviously indirectly working with the community and the impact of
25 adjacent neighbors. I don't have any problem with following this

1 through, or rather approving the continuance.

2 I think, in fact, at the end of the hearing that
3 the details of this case were getting very finely tuned. In
4 fact, if maybe even not walking away from having to be before us,
5 and I wish them well in terms of getting a design that works for
6 new construction, and one that doesn't adversely impact the
7 surrounding area but actually adds to that block and that infill
8 portion and parcel.

9 Is there anything -- so I would make a motion that
10 we continue this case for 120 days. Do we need to set that for -
11 - well, let me have a second on that.

12 VICE CHAIRPERSON RENSHAW: Second.

13 CHAIRPERSON GRIFFIS: Thanks. Is there additional
14 information we need to take into that?

15 MS. SANSONE: Mr. Chair, I would suggest that we
16 actually set a date so that we then may need to renotice because
17 of the time frame. It's so far away.

18 CHAIRPERSON GRIFFIS: Okay.

19 SECRETARY PRUITT: The two dates available in
20 September that would be past 120 days, and I would suggest either
21 the 10th or the 17th because you have your meeting on the 3rd,
22 and that's always a hard one. So, the other two are regular
23 hearing days So, it's your choice right now. There's nothing
24 booked on them.

25 CHAIRPERSON GRIFFIS: Is the Applicant

1 representative here? Is there any preference for dates?

2 Actually, let me have you introduce both of you.

3 MR. BLANCHARD: Mr. Chair and members of the Board,
4 for the Applicant, my name is Lyle Blanchard of Greenstein,
5 Delorm and Lux.

6 CHAIRPERSON GRIFFIS: Okay.

7 MS. ZIGNER: Mr. Chair and members of the Board,
8 Jeannine Rustad Zigner from Robbins, Kaplan, Miller & Ceresi, for
9 the party opponent, the Jones'.

10 CHAIRPERSON GRIFFIS: Did you hear the dates that
11 were indicated?

12 MR. BLANCHARD: Yes.

13 CHAIRPERSON GRIFFIS: Why don't we just repeat them
14 because I didn't.

15 SECRETARY PRUITT: The dates available that I
16 suggested, September 10 or September 16.

17 CHAIRPERSON GRIFFIS: Okay, September 10 or
18 September 16. Is there a preference by either of you? Is one
19 knocked out for you? You're both available both days?

20 MS. ZIGNER: Actually, first a question, is it the
21 16th or 17th?

22 SECRETARY PRUITT: Excuse me, 17th.

23 MS. ZIGNER: The 10th does not work for us, so if
24 it can be the 17th, that would be satisfactory.

25 MR. BLANCHARD: That's fine.

1 CHAIRPERSON GRIFFIS: Would that be satisfactory?

2 MR. BLANCHARD: Yes.

3 CHAIRPERSON GRIFFIS: Okay, then let's do that, the
4 17th, and it is on -- where are we, in the morning?

5 SECRETARY PRUITT: We can make it in the morning
6 because we have nothing on the agenda. So, make it a morning
7 case.

8 CHAIRPERSON GRIFFIS: Fabulous, first thing in the
9 morning on the 17th of September, which seems like years away.
10 Okay, if I'm not mistaken, that's all we have for this case
11 today, is that correct? You're not bringing any other matters
12 before us today?

13 MR. BLANCHARD: Actually, Mr. Chairman, by letter
14 of April 22, we submitted some revised plans which responded to
15 the ANC's report, its latest report, and to the recommendations
16 of the -- it was the ANC report of April 16 and the OP
17 recommendations of April 22. We submitted some further revised
18 plans which were going along the direction of both of those
19 bodies' recommendations. So, we would like to ask that the Board
20 grant a waiver of the filing deadline to accept that late
21 submission of revised plans.

22 CHAIRPERSON GRIFFIS: Why don't we wait until the
23 end product?

24 MR. BLANCHARD: That's fine with me.

25 CHAIRPERSON GRIFFIS: Okay. If further changes go,

1 I don't think the Board will have any problem in accepting the
2 drawings because, frankly, we like to look at drawings. I'd
3 rather than, you know, have an awful lot of documentation that we
4 file through, let's see where you go, wish you the best of luck,
5 and if there's not anything further. Anything else?

6 MS. ZIGNER: Nothing else.

7 CHAIRPERSON GRIFFIS: Great.

8 MS. ZIGNER: Thank you.

9 CHAIRPERSON GRIFFIS: Thank you both. Have a great
10 afternoon.

11 SECRETARY PRUITT: Mr. Chair, I would just remind
12 you. Even though we haven't made a decision on whether or not it
13 will be let into the record, I would suggest to make it easier,
14 that you serve the ANC and the other party just so that everybody
15 has the same information.

16 CHAIRPERSON GRIFFIS: Oh, yes.

17 MR. BLANCHARD: Just one question, if we get to the
18 point where we are back before the Board on the 17th, would you
19 like to establish a deadline for filing materials prior to that
20 date?

21 SECRETARY PRUITT: The week before would be fine.

22 CHAIRPERSON GRIFFIS: The week before.

23 SECRETARY PRUITT: Because that gives us enough
24 time to get them in a package. Do you know when the ANC meets?
25 There's no ANC person here, is there? Can you please come up,

1 please, ma'am?

2 MEMBER LEVY: Mr. Chair, do we need to allow for
3 responses to filings?

4 MRS. JONES: Whatever Tuesday of the month this is,
5 that's when it meets.

6 SECRETARY PRUITT: Okay.

7 CHAIRPERSON GRIFFIS: Do they meet in August?

8 MRS. JONES: No, July and August, I think they said
9 they didn't.

10 CHAIRPERSON GRIFFIS: Okay. Well, that starts to
11 define some of the schedule in terms of feedback. I'm sorry, I
12 may have rushed through this a little bit. Let's look back at
13 the schedule. If we have submissions in and we have new drawings
14 in, we probably need them in before a week before so that we can
15 have responses to it, and any other documentation that's
16 submitted. So, I would suggest that we look at --

17 SECRETARY PRUITT: In looking at the calendar,
18 based on your information, the ANC's first meeting would be
19 December 3.

20 MR. HART: September.

21 SECRETARY PRUITT: I'm sorry.

22 CHAIRPERSON GRIFFIS: September 3, right?

23 SECRETARY PRUITT: Right. I want to get through
24 this year too fast. It would be still September 3, the same day.
25 So, if they get it to you the 26th of August or, I mean,

1 somewhere around there? I don't know how your members meet.
2 Would they be willing to come in for that, or do you need it
3 before July before you recess?

4 MS. ZIGNER: To clarify, that was Mrs. Jones, who
5 is one of the parties and not with the ANC. Unfortunately,
6 there's no ANC commissioners here at this point.

7 SECRETARY PRUITT: Okay, then I guess it's a
8 judgment call the Board will make.

9 CHAIRPERSON GRIFFIS: Well, I mean, we usually give
10 two weeks and a week for response, right?

11 SECRETARY PRUITT: Yes, so we can send it a week
12 ahead, and then they can have their meeting and make a response.
13 Then that allows everybody else enough time.

14 CHAIRPERSON GRIFFIS: Yes, I think that's good. I
15 mean, I think it's fairly evident that the ANC is going to be
16 worked with on this, and is seeing the progression, and in fact,
17 their concerns are being addressed. So, you know, obviously if
18 it happens before the summer, then that's all the better. If
19 not, and the ANC can't pull it together, we can look to waiving
20 our rules to accept any reports that they have. Let us do that,
21 two weeks prior, which is --

22 SECRETARY PRUITT: August 27.

23 CHAIRPERSON GRIFFIS: Okay.

24 SECRETARY PRUITT: Correct.

25 CHAIRPERSON GRIFFIS: August 27 for submission of

1 all documentation.

2 SECRETARY PRUITT: And then response is due -- I'll
3 give you extra time, until September 6. It gives you a little
4 bit more time with the holiday and stuff.

5 CHAIRPERSON GRIFFIS: Good, so response is due back
6 September 6?

7 SECRETARY PRUITT: Yes.

8 CHAIRPERSON GRIFFIS: Is that clear?

9 MR. BLANCHARD: Yes.

10 MS. ZIGNER: Yes.

11 CHAIRPERSON GRIFFIS: Fabulous.

12 MS. ZIGNER: Thank you.

13 CHAIRPERSON GRIFFIS: Thank you both very much, all
14 three of you.

15 Okay, at least you thought we'd be getting out
16 rationally, folks. Let us continue, as we have cancelled our
17 afternoon in order to accommodate our morning schedule, it is
18 taking us after four, I would like to go through the minutes.
19 Have the Board members had ample time to read through the
20 minutes?

21 VICE CHAIRPERSON RENSHAW: They were not planning
22 on this.

23 CHAIRPERSON GRIFFIS: Indeed.

24 MR. WILLIAMS: Mr. Griffis?

25 CHAIRPERSON GRIFFIS: Yes, sir?

1 MR. WILLIAMS: Pardon the interruption. I
2 appreciate your letting me ask the question. Will you be turning
3 to the question of any of the infractions cases, which is why I
4 was waiting?

5 CHAIRPERSON GRIFFIS: Oh, dear. No, we will not.
6 Where is the rest of my schedule?

7 MEMBER LEVY: Don't go away yet. Bear with us just
8 a second, please.

9 MR. WILLIAMS: For the record, I should introduce
10 myself.

11 CHAIRPERSON GRIFFIS: Yes.

12 MR. WILLIAMS: It's Lindsay Williams, and in this
13 case, I'm affiliated with the law firm of Holland & Knight.

14 CHAIRPERSON GRIFFIS: And you are here concerning
15 which of the --

16 MR. WILLIAMS: I was here to listen to your
17 deliberations and to record your decisions in the two infractions
18 items that were on the agenda, Mr. Griffis.

19 CHAIRPERSON GRIFFIS: I see, and do you represent
20 any of the --

21 MR. WILLIAMS: No.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. WILLIAMS: No, it was pure public observation,
24 but I was here waiting for --

25 MEMBER LEVY: Well, we hope you enjoyed the other

1 deliberations.

2 MR. WILLIAMS: It was illuminating.

3 MEMBER LEVY: I know. Is that good?

4 MR. WILLIAMS: I think I should reserve judgment,
5 Mr. Levy.

6 CHAIRPERSON GRIFFIS: Okay. If I'm not mistaken,
7 and this has been whirlwind trying to get all this together, we
8 have moved Cooper and Rogers to next week, is that correct, the
9 14th, in the afternoon? Let me verify that. That's what my
10 scribble says, but we've had some shuffling around.

11 SECRETARY PRUITT: Unfortunately I have the same
12 scribble. I'm not quite sure either, in moving them.

13 CHAIRPERSON GRIFFIS: What we had done,
14 unfortunately, was to anticipate trying to get to them today, but
15 looking at the hour, we still have numerous procedural things to
16 get through. I just can't imagine starting those up at this
17 point.

18 What we're going to do is this, Board members. I
19 would suggest that we move the two morning decision makings for
20 Cooper and Rogers to next week, May 14, at 9:00 a.m. We have set
21 one case, the Holliday, for the first in the morning, at 9:00
22 a.m. These will follow up to that.

23 SECRETARY PRUITT: No, Pande.

24 CHAIRPERSON GRIFFIS: I'm sorry. Pande. Holliday
25 is in September, or December, depending on which Holliday we're

1 talking about.

2 Right, Pande is on the 14th, first, which is a
3 motion which I don't anticipate taking a huge amount of time.
4 So, I would imagine we would get to these fairly quickly for your
5 scheduling convenience, that we'll let you know that.

6 MR. WILLIAMS: Thank you.

7 CHAIRPERSON GRIFFIS: Sure. All right, Board
8 members, I would say we're at 4:20 right now. Let's take 15, 20
9 minutes and then we'll come back. We're going to do minutes, and
10 we are also going to do proposed application forms.

11 VICE CHAIRPERSON RENSHAW: We can press through
12 these.

13 CHAIRPERSON GRIFFIS: Oh, you want to do it right
14 now?

15 VICE CHAIRPERSON RENSHAW: Yes, and get out of
16 here.

17 CHAIRPERSON GRIFFIS: Okay, let's go. Mr. Hart, is
18 that okay with you?

19 MR. HART: Yes.

20 CHAIRPERSON GRIFFIS: Fabulous. All right, let's
21 go. March 12 --

22 MR. HART: We'll go straight to the minutes.

23 CHAIRPERSON GRIFFIS: Sure. Do you mind if I call
24 them?

25 MR. HART: Yes.

1 CHAIRPERSON GRIFFIS: Okay. Let's take them one at
2 a time. March 12, 2002, Goal, Adams Alley. Any comments on
3 March 12?

4 MEMBER LEVY: Bear with me. What are you seeing,
5 Adams Alley? I'm sorry.

6 CHAIRPERSON GRIFFIS: I'm sorry. I was calling out
7 cases that I saw as I was flipping pages. Adams Alley is the
8 16815 application on March 12, 2002.

9 MEMBER LEVY: I believe that I was not present for
10 this hearing.

11 CHAIRPERSON GRIFFIS: I don't think that was the
12 12th, was it? That was also the Trout Line.

13 MEMBER LEVY: Bear with me a moment. I was absent
14 one day. I'm sorry, that was in April.

15 CHAIRPERSON GRIFFIS: Right.

16 MR. HART: You were out April 16.

17 CHAIRPERSON GRIFFIS: April 16.

18 MEMBER LEVY: Thank you.

19 CHAIRPERSON GRIFFIS: Any problem with the minutes
20 of the 12th then? Comments or corrections, additives,
21 subtractives? In which case, all those in favor of approval,
22 signify by saying aye.

23 (Chorus of ayes.)

24 CHAIRPERSON GRIFFIS: Opposed?

25 (No response.)

1 CHAIRPERSON GRIFFIS: Okay, April 2 public meeting
2 bench minutes. We had Levine School, Washington Home. Any
3 questions, clarifications required? Approval of the 2nd of
4 April, all in favor?

5 (Chorus of ayes.)

6 CHAIRPERSON GRIFFIS: Opposed?

7 (No response.)

8 CHAIRPERSON GRIFFIS: And Mr. Hart, please
9 interrupt me if we have any sort of proxies from anybody that is
10 not listed.

11 MR. HART: Today we have not proxies.

12 CHAIRPERSON GRIFFIS: Okay, thank you. Okay, April
13 2 public hearing. I'm sorry, that's a duplicate.

14 April 9, 2002, that began with Holliday.

15 MEMBER LEVY: One question, Mr. Chair, on April 9,
16 Case No. 16857. We approved that without conditions, is my
17 recollection. Is that the case?

18 CHAIRPERSON GRIFFIS: What's the name of that?

19 MEMBER LEVY: That's the HQ Acquisitions at Tenley
20 Metro. There were conditions recommended by the ANC that are
21 outlined here. I don't recall that we adopted those.

22 CHAIRPERSON GRIFFIS: No, and I don't think it's
23 listing as we adopted, correct?

24 MEMBER LEVY: No, I just wanted to make sure that
25 was correct. It's not outlined here that we adopted them. I

1 don't recall having attached conditions. My recollection is that
2 this is correct. I just thought it was worth clarifying.

3 CHAIRPERSON GRIFFIS: Oh, I see. Yes, I think the
4 conditions will come out in the order if we had those. I don't
5 recall right off. Okay, anything else?

6 Approval of April 9, all in favor?

7 (Chorus of ayes.)

8 CHAIRPERSON GRIFFIS: Opposed?

9 (No response.)

10 CHAIRPERSON GRIFFIS: The 16th.

11 MEMBER LEVY: All right, this is the day that I was
12 absent.

13 CHAIRPERSON GRIFFIS: Okay. Ms. Renshaw, Mr.
14 Etherly, and myself were here, Ms. Benton Wallace participating.

15 VICE CHAIRPERSON RENSHAW: Did she send in a proxy?

16 CHAIRPERSON GRIFFIS: He indicated that there were
17 no proxies today. That was the St. Patrick's Episcopal. Any
18 questions, comments, additions? If not, I'd ask all those in
19 favor.

20 (Chorus of ayes.)

21 CHAIRPERSON GRIFFIS: And opposed?

22 (No response.)

23 CHAIRPERSON GRIFFIS: And the 23rd, racing through
24 these. Okay, any questions, clarifications, additions? If not,
25 all those in favor of April 23, 2002 acceptance, please indicate

1 by saying aye.

2 (Chorus of ayes.)

3 CHAIRPERSON GRIFFIS: Opposed?

4 (No response.)

5 CHAIRPERSON GRIFFIS: And if I'm not mistaken,
6 April 30 is our last. We have Ms. Mitten and Mr. May as the
7 Zoning Commissioners on the several cases. Again, I ask any
8 corrections, additions, subtractions.

9 MS. SANSONE: Mr. Chairman?

10 CHAIRPERSON GRIFFIS: Yes?

11 MS. SANSONE: On the first case there, 16871, there
12 is extensive discussion about the application being based on
13 errors during the permitting process in respect to the zoning and
14 requirements, and that was one of the basis for the Board's
15 decision, but there was another basis that the property was
16 unique and exceptional given the orientation of the adjacent lots
17 and the adjacent buildings and the way the alley system was
18 configured and the way that created a large open space. I think
19 there should be a sentence added to that effect because both of
20 those aspects were important to the Board's decision.

21 CHAIRPERSON GRIFFIS: Good. Thank you for picking
22 that up. I would agree.

23 VICE CHAIRPERSON RENSHAW: Mr. Chairman, on 16861,
24 April 30, application of Ingleside at Rock Creek, to have in the
25 minutes that there are families or residents on the 5300 block of

1 29th Street who signed a petition regarding noise in addition to
2 myself testifying before the Board on noise on the premises.

3 CHAIRPERSON GRIFFIS: Okay. We'll note that you
4 were recused in that case, but you're bringing clarification.

5 VICE CHAIRPERSON RENSHAW: I'd just like the
6 minutes to reflect that there was a petition submitted.

7 CHAIRPERSON GRIFFIS: Right.

8 MEMBER LEVY: Actually, footnote number one, Ms.
9 Renshaw, on page two at least partially addresses that.

10 VICE CHAIRPERSON RENSHAW: Partially.

11 CHAIRPERSON GRIFFIS: Yes, and I think that's what
12 she was going to.

13 MEMBER LEVY: I'm sorry.

14 VICE CHAIRPERSON RENSHAW: I just elaborated.

15 MEMBER LEVY: I understand.

16 MEMBER ETHERLY: And Mr. Chair, not to be too much
17 of a stickler on that, if there's perhaps a need for another
18 Board member to make that suggestion regarding the amendment of
19 the minutes, I'd be more than happy to be recorded as suggesting
20 that amendment as well, just for clarity's sake.

21 VICE CHAIRPERSON RENSHAW: Thank you.

22 CHAIRPERSON GRIFFIS: But I just changed the names
23 in the record. We'll do the voice-over later.

24 MEMBER LEVY: I wanted to clarify that was your
25 second joke of the day. It's a pretty light joke day, actually.

1 CHAIRPERSON GRIFFIS: Okay, anything else in that?
2 Anything with Metropolis, King's Creek? It's kind of amazing
3 how much we hear in a day.

4 MEMBER LEVY: I know.

5 CHAIRPERSON GRIFFIS: Okay, then all those in favor
6 of accepting the April 30, 2002 bench minutes, signify by saying
7 aye.

8 (Chorus of ayes.)

9 CHAIRPERSON GRIFFIS: And opposed?

10 (No response.)

11 CHAIRPERSON GRIFFIS: Very well. Okay, we have
12 been presented for approval proposed BZA application forms. I
13 would think it would be important to approve these so they might
14 proceed in the fashion that they will. I am hoping that Board
15 members had time to take a look at these, if not in the draft
16 forms that were coming through, but also in the final form. I
17 think that this is an incredible positive step in terms of making
18 it easily accessible and understandable to applicants what
19 information is required and how they will present it. I think
20 and I hope that this is part of the larger process that is being
21 implemented in the Office of Zoning that will make our job more
22 effective, and therefore serve the city much better.

23 So, I don't know if people have specific items. I
24 would note that the spread sheet that we often see in terms of
25 the zoning items, the existing conditions, minimum required,

1 maximum allowed, and variance I think has been updated and
2 clarified quite a bit so that I think it will be understandable
3 for us, but more importantly for the applicants.

4 I also would note that the instructions on the back
5 speak to the texts that have to be made for both special
6 exception and for variance. I think it is laid out well, not
7 only graphically but also in the exact word form for
8 understanding and apprehension -- I shouldn't say apprehension --
9 comprehension that is, of any applicant filling these out.

10 More importantly, it seems to me that the big
11 change and the overall change which is absolutely important is
12 the standardization of each of these forms, one in size but also
13 in form. If I'm not mistaken, and Ms. Kress has actually come
14 out, these will be able to be done on the computer or
15 electronically. Is that correct?

16 DIRECTOR KRESS: Absolutely. They will be posted
17 initially, but it is hoped that within two or three months, you
18 will actually be able to fill them out on the computer and even
19 file them.

20 CHAIRPERSON GRIFFIS: That will help for
21 handwriting problems, too.

22 VICE CHAIRPERSON RENSHAW: Mr. Chairman, Ms. Kress?

23 CHAIRPERSON GRIFFIS: Yes?

24 VICE CHAIRPERSON RENSHAW: Just a comment about the
25 sheet on affidavit of posting, ANC's take great pains to instruct

1 residents not to post on trees. We have a big problem in
2 neighborhoods about residents putting up signs about block
3 parties and estate sales, and we have to take them down when they
4 are put on trees.

5 Now, we had a matter with Ingleside at Rock Creek
6 where the applicant placed two posters on federal park property,
7 which happened to border the applicant's property, and those were
8 taken down and just removed because they were illegally posted.
9 So, I wondered if there can be some mention in these instructions
10 for affidavit of posting, not to post on trees and on park
11 property

12 DIRECTOR KRESS: I think that is a terrific idea,
13 and we will happily add that.

14 VICE CHAIRPERSON RENSHAW: Okay.

15 CHAIRPERSON GRIFFIS: If it's quick.

16 MR. WILLIAMS: Very quick. Thank you, again, Mr.
17 Chairman. Again, Lindsay Williams, and the question to you is to
18 whether or not you want to think about a transition period.
19 People may have applications on file. If you vote today, what
20 does that do to applications that are in process? How do we take
21 a little bit of experience for the next several months because
22 these forms -- I've known they were coming.

23 We in the applicant community get to the
24 -- we're probably going to find some little stumbles, and I'd
25 hate to see it become such a permanent adoption right now that we

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1 wouldn't look at this as a kind of a learning curve experience
2 before we fully embrace it. I particularly want to protect
3 applications that may be just outside the door right now.

4 CHAIRPERSON GRIFFIS: Okay, and I think Ms. Kress
5 can speak to that clearly.

6 DIRECTOR KRESS: Yes, thank you. First of all, I
7 want to assure you and Mr. Williams that again, this is an
8 ongoing piece of work. It is not intended to be final. As soon
9 as it is finalized within the next couple of days, it will be up
10 on our web. We have not put up the old forms, and it will be
11 announced that we have new forms. However, this transition is
12 going to be very soft. No one's going to be turned away that is
13 in the process or even if somebody's been working on it for
14 several months as a homeowner and comes in. We're not going to
15 send them back to redo the form on the new applications.

16 I would like to leave it without an official way of
17 handling it but more as may we do it on a case by case basis.
18 That's the way we'd like to do it, and especially the zoning
19 attorneys. I am very sure they will catch on very quickly.
20 We'll make sure that we get in touch with those folks to make
21 sure that they're aware that this has transpired. That's my
22 suggestion.

23 CHAIRPERSON GRIFFIS: Ms. Renshaw?

24 VICE CHAIRPERSON RENSHAW: Mr. Chairman, Ms. Kress,
25 one more item on posting, and that is it might be good to put in

1 a comment about removing the posters after the case goes before
2 the BZA because we now have some rain-soaked posters that are
3 hanging off various illegal places that we're just going to have
4 to cut down.

5 DIRECTOR KRESS: Again a good suggestion.

6 VICE CHAIRPERSON RENSHAW: All right.

7 CHAIRPERSON GRIFFIS: Let's go to the issue of one
8 overlapping into the time, or a probationary time in terms of the
9 reforms. Ms. Kress, is there an opportunity -- you say that
10 these are posted. Therefore, you could start using them on the
11 web site, is that correct?

12 DIRECTOR KRESS: And these will be the ones that we
13 hand out as people come in, as they do every day, and ask for
14 applications. We will now start handing these out. The old ones
15 will disappear, and this will be on our web site.

16 CHAIRPERSON GRIFFIS: Is it then a very large
17 process to make small changes to either or each of the forms?

18 DIRECTOR KRESS: Yes, it is a very small process.
19 I would just like it to be formal.

20 CHAIRPERSON GRIFFIS: Right. So, I would think
21 that --

22 DIRECTOR KRESS: But something very small, I'm not
23 sure that would require a --

24 CHAIRPERSON GRIFFIS: A Board's action.

25 DIRECTOR KRESS: Such as the things that Board

1 Member Renshaw has just suggested to me. I'm not sure we'd have
2 to come back to the Board for something like that.

3 CHAIRPERSON GRIFFIS: Right.

4 DIRECTOR KRESS: Is something else like that were
5 to be found, we'd just notify you. I'm not sure we would ask you
6 to take a formal vote at a meeting.

7 CHAIRPERSON GRIFFIS: And my understanding was the
8 reason we've one, reviewed the drafts as they've come up, but
9 also the point of us making a motion to approve any of these
10 today, it to allow these to go out and actually to be able to
11 have several comments. I mean, who knows what someone might
12 find, but I would anticipate that they would be minor, and then
13 be it that they'll be electronic, that we could have them
14 adjusted fairly easily.

15 DIRECTOR KRESS: We're not going to make 100
16 copies. It's going to be electronic, and just the copies as we
17 go. So, changes can quite easily be made, quite easily.

18 CHAIRPERSON GRIFFIS: Okay.

19 DIRECTOR KRESS: And the big thing is I think this
20 will be helpful while we hand out brochures and whatnot to the
21 people who are not as sophisticated in filing, I think these
22 instructions that are right with the application are going to be
23 more helpful. They're going to realize the burden of proof from
24 the moment they're filing, and if they don't understand it, can
25 be asking the people at our counter as they are filing, what does

1 this mean, what is this about. It gives us another mechanism of
2 making sure everyone is being informed of the full process.

3 CHAIRPERSON GRIFFIS: Good.

4 MEMBER ETHERLY: Mr. Chair, I would just note for
5 the record that the detailed comments of my colleague, Ms.
6 Renshaw, were just being rendered for illustrative purposes and
7 were in no way meant to be taken as deliberation regarding any
8 pending matter before the Board. Thank you very much.

9 CHAIRPERSON GRIFFIS: All right. Before we totally
10 fall apart here --

11 MEMBER LEVY: I'd just like to say that I think we
12 should comment Ms. Kress and the staff of the Office of Zoning
13 for putting forth this significant effort and attempting to
14 improve the process of the Board.

15 CHAIRPERSON GRIFFIS: Indeed.

16 DIRECTOR KRESS: Thank you. I would like to say
17 one other thing. Everything is now being translated to 8-1/2 x
18 11. The reason actually is because all court documents, as you
19 may know now, when anything is appealed, they're required to be
20 8-1/2 x 11, whereas before, legal size was acceptable. So, this
21 has a multi-purpose, multi set of reasons for why it's 8-1/2 x
22 11. Also, for purposes of faxing.

23 CHAIRPERSON GRIFFIS: Exactly.

24 DIRECTOR KRESS: There's just many purposes why all
25 of our files with this change are going to start going -- they

1 won't all happen overnight, but this change is also going to
2 bring about a change to all of our files, where we're going to be
3 moving to everything being 8-1/2 x 11.

4 CHAIRPERSON GRIFFIS: Great. I think that's well
5 done.

6 Okay, is there anything else we need to deal with
7 today then? Oh, we do need to have the motion to approve these.

8 DIRECTOR KRESS: Please.

9 CHAIRPERSON GRIFFIS: So, I would move the approval
10 of the proposed BZA application forms.

11 MEMBER ETHERLY: Seconded.

12 VICE CHAIRPERSON RENSHAW: As amended, Mr. Chair.

13 CHAIRPERSON GRIFFIS: As amended.

14 MEMBER ETHERLY: Seconded.

15 CHAIRPERSON GRIFFIS: All those in favor.

16 (Chorus of ayes.)

17 CHAIRPERSON GRIFFIS: And opposed?

18 (No response.)

19 DIRECTOR KRESS: May I just point one thing out, if
20 I didn't before. The reason there are so many different
21 addresses and squares and lots is because this is ready to be
22 incorporated into our larger computer system, and the computer
23 system needs each address separately, each lot and square
24 separately, so where there are multiple lines, we need them on
25 separate lines with the relief being sought, even though it may

1 be the same, we need to keep it that way for our computerization,
2 our longer term computerization process.

3 I just wanted to explain that because that's a
4 question a lot of people have asked compared to the old forms.

5 CHAIRPERSON GRIFFIS: Interesting. Okay. We look
6 forward to seeing them. Good.

7 Well, if there's nothing further, and if I'm not
8 mistaken, it is still May 7, 2002, I would indicate that we would
9 then adjourn the morning session of the public meeting and the
10 Board of Zoning Adjustments, 7 May 2002.

11 (Whereupon, the above-referenced hearing was
12 adjourned at 4:36 p.m.)
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